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No. 97-083-C01

AMENDED  
STATEMENT OF CHARGES AND  
NOTICE OF INTENTION TO  
ENTER AN ORDER

## Respondents

[illegible]

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
318 GA Bldg, P.O. 41200  
Olympia, WA 98504-1200  
(360) 902-8703

1

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DEPARTMENT OF FINANCIAL INSTITUTIONS

STATEMENT OF CHARGES, AND  
INTENT TO ORDER - 2

Division of Consumer Services

318 GA Bldg, P.O. 41200

Olympia, WA 98504-1200

(360) 902-8703



1  
2 **II. STATEMENT OF CHARGES**

3 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of  
4 Financial Institutions ("Director") is responsible for the enforcement, administration and  
5 interpretation of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act")<sup>1</sup>. After having  
6 conducted an investigation, and based upon the facts available as of May 11, 1998, the Director  
7 institutes this proceeding and finds as follows:  
8

9 **III. BACKGROUND**

10 **A. LICENSING HISTORY**

11 1. Nationscapital Mortgage Corp. ("Nations") is a mortgage broker licensed pursuant to  
12 the Act. Nations' license was issued by the Director on an interim basis on May 30, 1995, and  
13 converted to permanent status on June 30, 1995.  
14

15 2. Nations is authorized to hold itself out as a mortgage broker from 800 Bellevue Way  
16 North East, Suite 400, Number 448, Bellevue, Washington 98004. The Bellevue location is the  
17 only licensed location of Nations, and the only location from which Nations is authorized to hold  
18 itself out as a mortgage broker, or otherwise conduct the business of a mortgage broker in  
19 Washington. Nations has filed and maintained a surety bond for this location as required pursuant  
20 to RCW 19.146.205(4)(a).  
21  
22  
23

24 <sup>1</sup> The Act was amended April 21, 1997, effective July 21, 1997. Substantive changes were made in Disclosures  
25 (RCW 19.146.030), Accounting Requirements (RCW 19.146.060), Investigation Powers (RCW 19.146.235),  
26 Claims Against The Bond (RCW 19.146.240), and Branch Offices (RCW 19.146.265). Where appropriate, the  
impact of these changes will be noted. Codification changes as a result of the amendment will be noted where  
clarification is necessary.

1  
2 3. On September 29, 1997, Nations made application with the Department for branch  
3 offices pursuant to the Act at 10260 S.W. Greenberg Road, Portland, Oregon 97223, and 1045 W.  
4 Katella Avenue, Suite 200, Orange, California 92867. The California location of Nations is listed  
5 with the Department as the corporate headquarters for Nations. Neither location has been issued a  
6 license under the Act by the Director.  
7

8 4. In September 1996, Nations made application with the Department for consumer loan  
9 licenses under chapter 31.04 RCW, the Consumer Loan Act, for its Bellevue and California  
10 locations. The approval of Nations' consumer loan license applications is pending and will be  
11 dealt with as a separate administrative matter by the Director.<sup>2</sup>  
12

13 5. Jamie Chisick is registered with the Department as an owner, director and president of  
14 Nations. Jamie Chisick is domiciled in California and accepts mail at the California location of  
15 Nations. Jamie Chisick is known to have been the president and owner of Nations prior to its date  
16 of licensing. Jamie Chisick is also known by the Department to be a former employee of First  
17 Alliance Mortgage Co. ("FAMCO").<sup>3</sup> Jamie Chisick is also registered by the Department as the  
18 former president of GAMC, Inc. ("GAMC").<sup>4</sup>  
19  
20

21 <sup>2</sup> Acceptance or denial of Nations' consumer loan license applications has been delayed by incomplete  
22 application packages and the initiation of the investigation culminating in this order.

23 <sup>3</sup> FAMCO is a consumer loan company licensed by the Department pursuant to chapter 31.04 RCW the  
24 Consumer Loan Act. FAMCO is owned and operated by Brian Chisick, father of Jamie and Brad Chisick. Brian  
25 Chisick is the former owner of GAMC, a mortgage broker operated by Jamie Chisick and formerly licensed by the  
26 Department pursuant to the Act (see note 4).

<sup>4</sup> GAMC was a mortgage broker licensed by the Department pursuant to the Act from November 14, 1994  
through June 30, 1995, however, the Department was notified that GAMC ceased existence and became Nations  
on March 1, 1995. Therefore, the effective period of licensing for GAMC was November 14, 1994 through  
February 28, 1995. GAMC was owned 100% by Brian Chisick (see note 3) until all of the stock in GAMC was

1  
2 6. Brad Chisick is registered with the Department as a current owner and past director of  
3 Nations. Brad Chisick is known by the Department to be the brother of Jamie Chisick and a  
4 current owner and officer of Coast Security Mortgage, Inc., a mortgage broker licensed to conduct  
5 business in Washington under the Act. Brad Chisick is also known by the Department to be a  
6 former employee of FAMCO. Brad Chisick owns 20% of Nations making him a "principal"  
7 under WAC 208-660-010.  
8

9 7. Steven Willis ("Willis") is registered with the Department as the designated broker of  
10 Nations for all Washington business. Willis is known to have been the designated broker for  
11 Nations in Washington since May 30, 1995. Willis is also known by the Department to be a  
12 former employee of FAMCO and a former manager of GAMC.  
13

14 8. Scott Johnson ("Johnson") is identified in Nations' license application as a "Field  
15 Rep," however, Johnson meets the definition of "loan originator" pursuant to RCW  
16 19.146.010(10), and is considered such by the Department in this statement of charges. Johnson  
17 works for the licensed Bellevue location of Nations.  
18

19 9. Michael Buff ("Buff") is identified with the Department as the vice president of  
20 operations for Nations at its California headquarters. Buff is also listed as a director of Nations.  
21 Buff is domiciled in California and accepts mail at the California location of Nations. Buff is  
22 known by the Department to be a former employee of FAMCO. Buff held himself out to the  
23  
24

25  
26 transferred to Jamie Chisick and the company became known as Nations. Brian Chisick was chairman of the  
board and secretary of GAMC.

1  
2 Department as the person in control of Nations' Washington records and the primary point of  
3 contact and representative for Nations during the Department's investigation.

4 10. Kevin Kraus ("Kraus") is identified with the Department as the telesales manager for  
5 Nations at its California headquarters.

6  
7 11. Darren Williams ("Williams") is identified with the Department as the sales manager  
8 for Nations at its California headquarters. Williams is believed by the Department to be a former  
9 employee of FAMCO.

10 B. CHRONOLOGY OF EVENTS AND CORRESPONDENCE PRECEDING THIS ORDER

11  
12 1. On February 21 and March 8, 1995, the Department was notified in writing by  
13 Benjamin Medina ("Medina"), chief financial officer of GAMC and Nations, that GAMC would  
14 change its name to Nations effective March 1, 1995. The letter also stated that, "The president of  
15 the company, Jamie Chisick will be the principal owner." The correspondence also contained an  
16 amended endorsement changing GAMC's surety bond to Nations, as well as a Washington  
17 Certificate of Status for Nations from the Washington Secretary of State.

18  
19 The letter and prior telephone correspondence from Medina further informed the  
20 Department that this change was a name change only, requiring a revised license reflecting such.  
21 No address or personnel changes were made by Medina or any other officer of GAMC. Believing  
22 GAMC to be the same entity as Nations, the Department allowed Nations to operate under the  
23 licensed name of GAMC during the process of a name change to Nations. Due to a change in  
24 designated brokers following Medina's notification, the change of name on the license was not  
25 made until May 30, 1995.  
26

1  
2 2. In March 1997, the Department became aware that Nations was utilizing the services of  
3 a California escrow company known as Riverview Escrow Co., Inc. ("Riverview"). Riverview is  
4 believed by the Department to be a wholly owned company of Jamie Chisick. Riverview does not  
5 hold a license to operate as an escrow company in Washington pursuant to chapter 18.44 RCW,  
6 the Escrow Agent Registration Act,<sup>5</sup> and has never been issued such a license by the Director of  
7 Licensing or Financial Institutions.  
8

9 On or about this time (March 1997) the Department became aware of actions filed by the  
10 States of Oregon and Arizona against Riverview for unlicensed business as an escrow agent.  
11 Concerned with this apparent unlicensed activity with Washington consumers, the Department  
12 began inquiring of Riverview's status with Jamie Chisick.  
13

14 3. By letter dated March 18, 1997, Jamie Chisick informed the Department that  
15 Riverview was controlled by himself and licensed by the State of California. Jamie Chisick  
16 informed the Department that Riverview's business practices were such that Riverview was not  
17 required to hold a license issued by the Director.<sup>6</sup>  
18

19 Jamie Chisick further informed the Department in this letter that, "Riverview's handling  
20 of non-escrow services often results in reduced closing costs to Nationscapital's clients." The  
21  
22  
23  
24

25 <sup>5</sup> The Director is responsible for the administration and enforcement of chapter 18.44 RCW.

26 <sup>6</sup> Riverview is currently under investigation by the Department for unlicensed business with Washington consumers.



1  
2 Department has found this statement to be untrue and has determined that fees charged to  
3 Nations' consumers by Riverview result in an approximate \$350 increase in costs to borrowers.<sup>7</sup>

4 4. In April 1997, John and Carol Salick ("Salick") filed a complaint with the Department  
5 against Nations. The complaint contained allegations of a serious nature. The complaint is  
6 discussed under section IV.J. of this order.  
7

8 5. In June 1997, Nevada Prater ("Prater") filed a complaint with the Department against  
9 Nations. The complaint contained allegations of a serious nature. The complaint is discussed  
10 under section IV.J. of this order.

11 6. On June 9, 1997, by letter, Paul Battaglia ("Battaglia")<sup>8</sup> attorney for Nations addressed  
12 the Department's review of Nations' application for a consumer loan application. Battaglia  
13 requested that the Department, "... give the application the immediate attention it deserves."<sup>9</sup>  
14

15 7. On June 24, 1997, the Department began an investigation of Nations based on the  
16 following:  
17

18 a. Nations use of Riverview;  
19

20 <sup>7</sup> A review of pricing schedules provided by licensed Washington escrow companies shows that on average the  
21 fee for a refinance transaction of up to \$100,000 is less than \$400.00. On average, escrow costs to consumers of  
Nations are \$750.00 on a comparable transaction.

22 <sup>8</sup> At the time of this statement of charges, Nations employs four attorneys working for two firms from three  
locations. Paul Battaglia and Douglas Smart represent the firm of SmithSmart in Seattle. Steven Tubbs represents  
23 the firm of Schwabe Williamson & Wyatt in Vancouver, WA. Gary Roberts represents Schwabe Williamson &  
Wyatt in Portland, OR. Throughout this statement of charges the Department has attempted to clarify which  
24 attorney is responsible for which issue. Where the identification of specific attorneys does not provide  
clarification, or when the Department has responded to multiple attorneys simultaneously, the order refers to  
Nations' attorneys generically.

25 <sup>9</sup> The Department's records show that Nations' initial application for a consumer loan license was incomplete  
26 and remained incomplete until mid-1997. During this time the Department received serious complaints filed  
against Nations as a mortgage broker, along with adverse references from other states in regards to Riverview.

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b. Consumer allegations of abusive loan origination and closing practices;

c. Nations' application for a consumer loan license and the Director's duty to determine financial responsibility, experience, character, and general fitness as an applicant such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently prior to issuing a consumer loan license.<sup>10</sup>

8. The Department's investigation of Nations (discussed in detail later in this statement of charges) began with an attempt to review records on-site at Nations' Bellevue location pursuant to the authority granted under RCW 19.146.235 and Demand for Production of Records No. 97-083-S01, served on Willis June 24, 1997 (Exhibits A.1 through A.3). No records were available for the Department's review at the Bellevue location on June 24, 1997. Ensuing from this point was a protracted series of correspondences, demands, subpoenas, negotiations and orders filed administratively and in Superior Court with the intent of obtaining (or preventing) access to records as is authorized by the Act.

9. Nations claimed that in 1995 the Department had granted permission to Nations to maintain its books and records in the State of California. The Department informed Nations that it had not given permission for Nations or any other mortgage broker to maintain its books and records at any location other than its licensed location.

On June 25, 1997, the Department's Supervising Analyst, Chuck Cross ("Cross") spoke with Buff by telephone concerning the lack of access to records at the Bellevue office. On that

---

<sup>10</sup> The Department considers this investigation under the Consumer Loan Act to be a matter separate from this statement of charges. It is identified here to establish investigation cause only.

1  
2 same day, Buff sent a facsimile to the Department of a letter purportedly written by Jamie Chisick  
3 to the Department on April 7, 1995, requesting that the Department allow Nations to keep its  
4 records in California. The Department has no record of receiving this letter, nor any record of  
5 response to the request. Despite requests by the Department, Nations has provided no evidence of  
6 delivery of this letter to the Department and has provided no evidence of any response from the  
7 Department. Further, the rules permitting the Department to allow out of state records retention  
8 were not promulgated until June 21, 1995. Had the Department exercised its authority pursuant to  
9 WAC 208-660-140, subsequent to June 21, 1995, Nations and the Director would have been  
10 required to execute a written agreement. No such agreement has been executed.  
11  
12

13 10. Between the dates of June 24, 1997, and August 4, 1997, the Department made  
14 telephone contact with Nations and its attorneys ten times concerning the availability of records  
15 under the Department's two demands. At no time during this period were the records made  
16 available to the Department.  
17

18 11. On June 26, 1997, the Department received notification from the Washington  
19 Department of Licensing ("DOL") that an investigation of Willis and Nations was in process  
20 concerning violations of chapter 42.44 RCW, Notaries Public. DOL informed the Department  
21 that it had experienced difficulty in its investigation of Nations and Willis and requested any  
22 assistance the Department may be able to provide in obtaining records. This information  
23 heightened the Department's concern of consumer harm by Nations, however, as of this date the  
24 Department has provided no records to DOL in its investigation.  
25  
26

1  
2 12. On July 9, 1997, Douglas Smart ("Smart"), attorney for Nations, wrote to the  
3 Department to register concern with the Department over its visit to Nations' Bellevue location.  
4 In this letter Smart stated that the Department had appeared unannounced, removed original  
5 documents from the office, and took testimony of Willis under oath without providing Nations'  
6 attorneys prior notice of its intent to do so. Smart further challenged the Department's  
7 investigative authority under the Act, and stated, "... that Nationscapital fully intends to comply  
8 with the Demand for Production in the Nationscapital investigation and the Subpoena Duces  
9 Tecum in the Riverview investigation, subject to your response to the concerns set forth below."  
10

11 The primary concern stated by Smart in this letter was that the Department refrain from  
12 complying with any request made pursuant to chapter 42.17 RCW, the Public Disclosure Act, for  
13 information obtained from Nations during its investigation. Accompanying this letter was a  
14 formal Objection to the Department's demand.  
15

16 13. In response to Smart's July 9<sup>th</sup> letter, the Department wrote to Nations' attorneys that  
17 it's investigation would continue within the authority of the Mortgage Broker Practices Act, the  
18 Escrow Agent Registration Act and the Administrative Procedure Act.  
19

20 14. On July 24, 1997, the Department entered and served Demand for Production of  
21 Records No. 97-083-S02 (Exhibits A.4 through A.6), reiterating its request for records demanded  
22 under 97-083-S01.  
23

24 15. On August 4, 1997, Cross contacted Nations' attorneys by telephone concerning the  
25 Department's demands for production of records. Cross was informed by Smart that Nations'  
26

1  
2 records remained in California. Cross also spoke with Buff on this date who registered concern  
3 that the Department might release its investigative findings and records to other parties.

4 16. On August 6, 1997, failing to receive production under the June 24<sup>th</sup> or July 24<sup>th</sup>  
5 demands, the Department, pursuant to the authority under RCW 19.146.235, entered and served  
6 Subpoena 97-083-S03 (Exhibits A.7 through A.10).  
7

8 17. On August 6, 1997, Smart wrote to the Department addressing concerns over the  
9 Department's procedures in obtaining access to Nations' records. This letter confirmed that  
10 Nations' records remained in California. Despite the Department's ten previous telephonic  
11 contacts requesting access to records, Smart's letter in regards to access to documents stated, "...  
12 it is not unreasonable for Nationscapital to expect the State to cooperate in arranging the dates and  
13 times of production. Please simply call us to make the necessary arrangements." Smart's letter  
14 went on to state, "Referring to your most recent Document Request dated July 24, 1997, please be  
15 advised that with the exception of the public advertisements requested in Document Request No.  
16 1(F), Nationscapital's position is that all of the requested documents are private, confidential and  
17 proprietary business records . . . Accordingly, before these sensitive documents are produced to  
18 the Department by Nationscapital, we are reiterating our previous request of July 9 for an express  
19 assurance that the requested documents and information contained therein will not be disclosed by  
20 the Department to third parties without giving Nationscapital prior notice and opportunity for a  
21 hearing before a court of competent jurisdiction."  
22  
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25 18. On August 13, 1997, the Department sent its resolution of the Salick complaint to  
26 Nations requiring a response to its allegations not later than August 27, 1997.

1  
2 19. On August 15, 1997, the day Nations was required to comply with the Department's  
3 subpoena, Nations attorneys filed a formal objection to the subpoena with the Department. On  
4 this same date, Nations' attorneys filed a Motion for Temporary Restraining Order against the  
5 Department in Thurston County Superior Court. The motion requested a Temporary Restraining  
6 Order ("TRO") enjoining the Department from disclosing or releasing Nations' confidential and  
7 proprietary records, files, and documents to the public. Nations asserted that their records  
8 contained "trade secrets, proprietary sales and marketing manuals and invaluable customer lists."  
9

10 20. On August 18, 1997, this TRO was granted by the court restraining the Department  
11 from "... disclosing or releasing, pursuant to a request under the Public Records Act, Chapter  
12 42.17 RCW, any other statute, or otherwise, any of the Petitioner's records, files and documents,  
13 or the information contained therein, acquired during the course of its investigation of Petitioner  
14 to any person or entity requesting the same." This order was granted with an expiration date of  
15 September 15, 1997.  
16

17 21. On August 21, 1997, the Department wrote to Nations' attorneys requesting  
18 compliance with the August 6<sup>th</sup> subpoena, asserting that a TRO had been entered resolving  
19 Nations' concerns with protection of the investigation records, and there should be no further  
20 delay in production.  
21

22 22. On August 25, 1997, Battaglia wrote to the Department acknowledging that issues of  
23 records protection had been satisfied, but that the records had still not been transferred to  
24 Washington and therefore could not be reviewed by the Department until at least September 3,  
25 1997.  
26

1  
2 23. The Department responded to Nations' attorneys on August 26, 1997. This letter  
3 recounted the history to date of the Department's notification to Nations that records, regardless of  
4 issues of access and protection, must be kept within Washington. The letter also recounted the  
5 history of attempts by the Department to gain access to the records. The letter reminded Nations  
6 that there was no reason for Nations to have maintained its records outside of the state in violation  
7 of RCW 19.146.060.  
8

9 24. On August 27, 1997, Smart wrote to the Department stating that records would be  
10 available for review on September 3, 1997. This letter also contained a statement to the  
11 Department in regard to the Salick complaint. This statement acknowledged that Salick had been  
12 overcharged by \$8,805, and that the Truth in Lending Disclosure Statement had been misleading  
13 to the borrower.  
14

15 25. On August 29, 1997, the Department entered Temporary Order to Cease and Desist  
16 No. 97-083-001 ("TCD"), against Nations. The order was entered based upon findings by the  
17 Department of unlicensed business in Washington, failure to maintain an adequate bond,  
18 employment of a scheme, device, or artifice to defraud or mislead borrowers, failing to make  
19 disclosures as required, making false or deceptive statements or representations in regard to rates,  
20 points, or other financing terms or conditions, engaging in bait and switch practices, making false  
21 statements in connection with an examination of Nations' business, failing to maintain a trust  
22 account as required by the statute and rules, failing to maintain books and records readily  
23 available as required by statute and failing to provide the Department with access to these records.  
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1  
2 Based on these findings, the Director determined that the public was likely to be substantially  
3 injured by any delay in entering an order.

4  
5 26. On September 2, 1997, the Department set forth its findings in the Prater complaint in  
6 the form of the Department's Resolution Letter. This letter required a response to the allegations  
7 contained within the letter by September 18, 1997. Although this matter is discussed elsewhere in  
8 this statement of charges, the Department has never received a response to the allegations of  
9 violation.<sup>11</sup>

10  
11 27. On September 5, 1997, Nations filed a motion for another TRO<sup>12</sup> in Thurston County  
12 Superior Court with the intent of staying the Department's TCD.

13  
14 28. On September 15, 1997, an Order Granting Nations' Motion for Preliminary  
15 Injunction (concerning the August 18<sup>th</sup> TRO) was granted in Superior Court. The order enjoined  
16 the Department from releasing records to third parties pursuant to chapter 42.17 RCW, without  
17 ten days prior notice and a reasonable opportunity to object to any such disclosure. However, the  
18 order allowed the Department to voluntarily make disclosure of the records and findings to  
19 another government investigative agency without seeking prior court approval.

20  
21 29. On September 16, 1997, the Superior Court granted Nations' motion for a second  
22 TRO in a Temporary Order Staying Agency Action ("Stay"). The order was granted primarily  
23 due to the court's findings that the Director "... does not have authority under RCW 19.146.227  
24 to order that Petitioner immediately cease doing business or to take other affirmative acts as

25  
26 <sup>11</sup> As noted elsewhere in this section, Nations has indicated on several occasions that it does not intend to reply  
specifically to the violations cited.



1  
2 directed in the Temporary Order to Cease and Desist." The court did, however, affirm that "RCW  
3 19.146.227 does authorize the Department to issue a temporary cease and desist order directing a  
4 licensee to cease and desist from conducting business in a manner that is injurious to the public or  
5 violates any provision of chapter 19.146 RCW."

6  
7 The court granted the Stay pursuant to RCW 34.05.550(3), subject to Nations' compliance  
8 with several terms and conditions. The Stay ordered Nations to:

9 a. Comply with the law and is specifically restrained from:

10 i. Making false promises or misleading statements in regards to loan or  
11 brokerage fees, interest rates and costs, contrary to the requirements of state disclosure in federal  
12 truth in lending disclosure statements;

13  
14 ii. Falsely notarizing documents in violation of 19.146.0201(1);

15 iii. Failing to make timely disclosure of lending information regarding  
16 loan or brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in  
17 lending disclosure statements; and

18  
19 b. Nations is required to keep and maintain its business records, subject to the  
20 current and future orders of this Court, accessible to the Department for its review and  
21 investigation pursuant to RCW 19.146.060 and the rules adopted thereunder; and

22 c. Nations shall promptly file with the Department a Certificate of Authorization  
23 regarding any trust accounts used in connection with its business in Washington, pursuant to  
24 RCW 19.146.050 and the rules adopted thereunder.  
25

26  

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<sup>12</sup> This TRO was filed and litigated by Steven Tubbs for Nations.

1  
2 30. On September 17, 1997, the Department again appeared at Nations' Bellevue office to  
3 investigate the company's books and records. Buff was provided with a written list of  
4 investigation questions pertaining to Nations' records. This document notified Buff that the  
5 Department would be assessing investigation fees of \$45 per hour for each man hour expended on  
6 the investigation. To avoid any confusion in the Department's request, a further notification was  
7 provided that stated, "When used, the word 'all' refers to any items fitting the description used,  
8 for all periods of time in which Nationscapital Mortgage Corp. has been licensed under its current  
9 name or its prior name of GAMC." On September 22, 1997, Buff replied for Nations. The list of  
10 questions and Nations reply to each are as follows:  
11  
12

13 a. Q. Are all loan files available for the Department's review?

14 R. To the best of Nations' knowledge after a diligent search of its records and  
15 files, all Nations loan files have been produced for the Department's review, except for the most  
16 recent fundings which Nations will produce promptly. GAMC loan files have not been produced.  
17

18 b. Q. Are the loan files complete? In particular, are all documents that were  
19 available to Nations that are related to the loan transaction contained within the loan files? Have  
20 any documents that were originally in the files, been subsequently removed from the files?

21 R. To the best of Nations' knowledge, the loan files are complete.

22 c. Q. Are all trust account records available for the Department's review?

23 R. All Nations trust account records have been or will be produced for the  
24 Department's review. Nations is presently compiling the additional trust account records  
25 requested in Mr. [Crosses'] September 18, 1997 correspondence (i.e., bank statements,  
26

1  
2 reconcilements to the bank statements, a check register recounting all deposits, disbursements and  
3 adjustments at the time the transactions are made, and canceled checks and invoices supporting  
4 disbursements made from the trust account). These records include bank statements from  
5 February 1997 to date, during which time period there was no trust account activity. Trust  
6 account records for GAMC have not been produced.  
7

8 d. Q. Are all general account records relating to Nations' Washington business  
9 available for the Department's review?

10 R. Nations' general accounting records have not yet been produced (This  
11 response goes on to explain that Nations' general accounting records are kept at the corporate  
12 level as aggregate records and cannot be easily separated for review).  
13

14 e. Q. Are copies of all advertisements used to solicit Washington business  
15 available for the Department's review?

16 R. Nations does not advertise in Washington.  
17

18 f. Q. Are employee file records including agreements, copies of W2s or 1099s,  
19 etc. available for the Department's review?

20 R. To the best of Nations' knowledge after a diligent search of its records and  
21 files, all Nations' employee file records have been produced.  
22

23 g. Q. Are all agreements and contracts between Nations and any other entities  
24 including lenders available for the Department's review?

25 R. To the best of Nations' knowledge after a diligent search of its records and  
26 files, all agreements and contracts between Nations and other entities have been produced.

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h. Q. Are all lender rate sheets available for the Department's review?

R. All lender rate sheets have been or will be produced for the Department's review. Additional lender rate sheets requested by the Department will be produced promptly. Rancho Vista Mortgage, one of the particular lenders identified by the Department, is now known as Americredit and that lender rate sheet has already been produced.

i. Q. Are all sales manuals, employee instruction manuals, manager handbooks, etc. available for the Department's review?

R. All Nations' manuals have been produced.

j. Q. A list of Washington consumers solicited by Nations or any individual or company contracted to solicit for Nations.

R. Nations will produce this list promptly.

k. Q. A list of all borrowers for whom a loan was originated in Washington.

R. To the best of Nations' knowledge after a diligent search of its records and files, this has already been produced.

l. Q. Details of any disputes settled with consumers, complete with copies of settlement agreements and amounts paid.

R. To the best of Nations' knowledge after a diligent search of its records and files, all settlements with Nations customers have been produced.

Nations' response further states, "With regard to production of GAMC records, those records were not the subject of any demand for production of records or subpoena issued by the Department, and have not been produced. Contrary to the Department's assertion that GAMC is

1  
2 simply a prior name of Nations, that entity was an entirely separate corporation with entirely  
3 different ownership. GAMC's files are not maintained by Nationscapital."

4  
5 31. On September 18, 1997, the Department identified records not produced by Nations  
6 and memorialized these in a letter to Buff and Battaglia. The missing items included:

7 a. All trust account records for September 1994 through May 1995. To date,  
8 records have not been produced for this period of time. For the period in which records were  
9 provided (June 1995 through January 1997), missing from the records were bank statements,  
10 reconcilements to the bank statements, a check register recounting all deposits, disbursement and  
11 adjustments at the time the transaction was made, and canceled checks and invoices supporting  
12 disbursements made from the trust account.  
13

14 b. Any files for loans originated prior to June 1995.

15 c. All general accounting records.

16 d. Lender rate sheets. Only six lender rate sheets had been provided to the  
17 Department. Lender rate sheets are generally faxed to the mortgage broker on a daily basis by  
18 every lender to whom the mortgage broker submits loans. Hundreds of such sheets should have  
19 been available for the Department's review. Lender rate sheets are an important investigative  
20 document because they show the actual rates available to a mortgage broker versus the rates given  
21 to consumers as the "best available" rates.  
22

23  
24 32. On September 25, 1997, Buff notified the Department in writing that the Department  
25 would be unable to continue its records review from October 1<sup>st</sup> through October 13<sup>th</sup>, 1997. The  
26

1  
2 interruption in the investigation was apparently due to personal commitments of all of Nations'  
3 officers and employees.

4 On this same date, the Department entered Demand for Production of Records No. 97-  
5 083-S04 (Exhibits A.11 through A.14), reiterating its previous demands and subpoena and  
6 clarifying once and for all that the Department considered GAMC to be the predecessor to  
7 Nations and the licensed entities to be one and the same (this matter is discussed in greater detail  
8 paragraph IV.K.).  
9

10 33. On September 29, 1997, the Department notified Nations that a complete halt of its  
11 investigation was not acceptable. The correspondence offered Nations four alternatives to the  
12 impasse. All of these alternatives were rejected by Nations and the Department was prevented  
13 from conducting its investigation and records review for 13 days.  
14

15 34. On September 30, 1997, Steven Tubbs ("Tubbs"), attorney for Nations, wrote to  
16 Blado and explained Nations' position in regards to the company known as GAMC. The letter  
17 stated, "GAMC was a corporation. For better or worse, Nationscapital, a different corporation,  
18 took over GAMC's offices in Bellevue, and retained some, but not all, of GAMC's employees.  
19 From an accounting perspective, which is most relevant here, there was a 'clean break'. What  
20 was GAMC's remained GAMC's; and what was Nationscapital's stayed Nationscapital's."  
21

22 35. The Department's on-site investigation of Nations' records was completed on  
23 November 4, 1997. Nations' continues to maintain all of its current and recently closed files in  
24 California despite the Superior Court Stay ordering them to comply with record retention  
25 requirements under Washington law. Nations' policy (as stated to Cross by Buff) was to not  
26

1  
2 transfer the files to Washington until the transaction was complete. Due to this policy the  
3 Department had been unable to review certain August 1997 files, and no September, October or  
4 November 1997, files had been made available despite repeated requests.

5  
6 At the Department's exit from Nations' Bellevue office, written arrangements were made  
7 with Nations whereby the Department would be provided records upon request at the  
8 Department's offices. In this arrangement, Buff stated, "... Nationscapital has already  
9 implemented procedures to achieve and insure full compliance ..."

10  
11 36. On November 12, 1997, the Department wrote to Nations requesting all files for the  
12 months of September and October 1997, all lender rate sheets, and responses to the Salick and  
13 Prater resolutions. A similar letter was sent to Tubbs by Blado on November 20, 1997.

14  
15 37. On November 24, 1997, the Department sent a new complaint filed by Deborah  
16 Agena ("Agena"), to Nations for its response.

17  
18 38. On November 26, 1997, Smart responded to the Department. His letter supported the  
19 Department's conclusion that Nations continued to maintain records outside of Washington  
20 despite the court ordered Stay. His letter stated, "... [Buff] is sending copies of those files to the  
21 Bellevue, Washington office ..."

22  
23 In regard to the requested rate sheets, Smart stated, "Nationscapital does not maintain  
24 outdated lender rate sheets in its files ..."<sup>13</sup>

25 <sup>13</sup> As stated under paragraph 31d of this section, rate sheets are an important record used to determine prevailing  
26 rates at a given point in time. As such, the Department considers them to be a "record" to be maintained in  
accordance with the Act.

1  
2 39. On December 5 and 8, 1997, the Department received shipments of additional files  
3 for the months of September, October, November and part of December.

4 40. On December 17, 1997, the Department wrote to Nations requesting copies of any  
5 files originated subsequent to December 9, 1997. This letter also reiterated the Department's  
6 request for a response to the Salick and Prater resolutions which had been due not later than  
7 August 27, 1997 and September 18, 1997, respectively.

8 41. On January 22, 1998, the Department entered and sent Directive to Appear and Give  
9 Testimony Under Oath No. 97-083-S05 (Exhibits A.15 through A.17), to nine Nations employees  
10 pursuant to RCW 19.146.235. Between the dates of January 23, 1998 and February 23, 1998,  
11 Battaglia sent five letters to the Department seeking to modify or control the format of the  
12 directive and the examinations under oath. During this same period, the Department sent four  
13 rejections of the modification or control attempts to Battaglia. The Nations employees failed to  
14 appear as instructed and the Department considers Nations to have refused to comply with its  
15 lawfully entered directive.

16 42. On February 2, 1998, the Department again sent notice of the Agena complaint to  
17 Nations requiring a response.

18 43. On February 9, 1998, Buff wrote and informed the Department that both the Salick  
19 and Agena complaints had been settled, and that Nations continued to litigate and negotiate the  
20 Prater complaint.

21 44. On February 11, 1998, the Department received a letter from Battaglia informing the  
22 Department that it must limit its regulatory investigation to issues revolving solely around the  
23  
24  
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1  
2 Prater complaint. Battaglia wrote, that since Nations had resolved its issues directly with Salick  
3 and Avena and that "... Prater must now be the sole focus of the Department's investigation."

4  
5 45. On February 13, 1998, the Department once again informed Nations that its responses  
6 were not satisfactory in that they did not address the Department's concerns of violations  
7 committed. Subsequently, the Department received a copy of a settlement agreement between  
8 Salick and Nations. However, the agreement did not address the violations cited by the  
9 Department and no other response was given. The Department also received a copy of a  
10 settlement agreement between Avena and Nations. This agreement did not address the violations  
11 cited, however, a follow-up letter from Buff did address the violations cited.  
12

13 On this same date, the Department informed Battaglia, "Prater is one of eight complaints  
14 filed with the Department against Nations which triggered an investigation into violations of  
15 chapter 19.146 RCW, the Mortgage Broker Practices Act. That investigation began formally on  
16 June 24, 1997, and continues to date."  
17

#### 18 IV. INVESTIGATION FINDINGS

##### 19 A. MAINTENANCE OF BOOKS AND RECORDS AND DUTIES OF PERSON SUBJECT 20 TO EXAMINATION OR INVESTIGATION

21 Section Summary: *The findings in this section expose Nations' intentional violations of*  
22 *the Act's record keeping requirements and Nations' requirement to make its business and records*  
23 *accessible to the Department for examination. By failing to maintain its records as required and*  
24 *by withholding, abstracting, removing, mutilating, destroying or secreting its books, records or*  
25  
26

1  
2 *other information, Nations interfered with the Department's ability to expediently determine the*  
3 *magnitude and severity of the violations alleged in this order.*

4  
5 1. The Department's investigation began with an on-site visit to the Bellevue office of  
6 Nations. Pursuant to RCW 19.146.235, Nations and Willis were presented with a request for  
7 records including:

- 8 a. All loan files.  
9 b. Trust account records.  
10 c. General account records.  
11 d. Copies of advertisements soliciting Washington business.  
12 e. Employee records.  
13 f. Agreements and contracts between Nations and other entities including lenders.  
14 g. All lender rate sheets.  
15 h. All sales manuals, employee instruction manuals, manager handbooks and other  
16 similar materials.  
17

18  
19 2. Nations and Willis were also presented with Demand for Production of Records No.  
20 97-083-S01, as a formal request for the items identified in 1 above.

21 3. Willis responded to the Department's request for records by stating that no records had  
22 been maintained in Nations' Bellevue office since he had taken his position in May 1995, and that  
23 all records were, and had always been, maintained at the California office.  
24

25 4. Willis was asked to explain the solicitation methods used by Nations with Washington  
26 consumers. Willis responded that all solicitation of consumers takes place by employees located

1  
2 in California. Once the California employee has obtained specific information concerning the  
3 Washington consumer, Willis or one of his staff is sent to the consumer's home to obtain  
4 signatures on certain loan file documents. These documents are then forwarded to Nations in  
5 California by Willis or a staff member of the Bellevue office. Willis stated that from this point  
6 forward the Bellevue office has little or no contact with the consumer until it is time for the loan  
7 to close. Shortly before the closing date the Bellevue office receives a package of closing  
8 documents from Riverview. Willis or one of his staff returns to the consumer's residence, obtains  
9 signatures on the closing documents, and then forwards the documents to California. Willis stated  
10 that the Bellevue office has no further knowledge of what transpires in the transaction after the  
11 documents are sent to California.  
12  
13

14 5. Throughout July and August 1997, the Department renewed its requests for access to  
15 Nations' books and records as is recounted in section I.B.13. through 25. of this order. These  
16 requests were formalized by Demand for Production of Records No. 97-083-S02, entered on July  
17 24, 1997, and Subpoena No. 97-083-S03, entered on August 6, 1997. Nations failed to provide  
18 access to records pursuant to either of these directives, instead claiming that the Department i) did  
19 not hold the authority to makes such requests (July 9, 1997 letter from Smart to the Department),  
20 ii) that such records required protection as a trade secret (August 18, 1997 TRO), or iii) that  
21 Nations simply was not in possession of the requested records (September 30, 1997 letter from  
22 Tubbs to Blado).  
23  
24

25 6. Based upon the Department's investigative findings and Nations' continued failure to  
26 provide access to its books and records, the Director entered TCD No. 97-083-O01, on August 29,

1  
2 1997. Nations responded to the TCD by filing suit for a Temporary Restraining Order in Superior  
3 Court. Judge Daniel J. Berschauer granted an order staying the TCD on September 16, 1997,  
4 subject to the following conditions:

5 a. "Nations shall comply with the law . . . ;" and

6  
7 b. "Nations is required to keep and maintain its business records, subject to the  
8 current and future orders of this Court, accessible to the Department for its review and  
9 investigation pursuant to RCW 19.146.060 and the rules adopted thereunder."

10 7. On September 17, 1997, the Department again visited the Bellevue office of Nations  
11 with the intention of reviewing all corporate books and records related to Nations' Washington  
12 business. Although the Department was presented with a large number of records, the  
13 Department's investigators determined that the following records had not been made available:

14 a. The majority of trust account records.

15 b. Lender rate sheets.

16 c. All general accounting records.

17 d. Any records prior to June 1995 (the Department had determined that Nations  
18 had originated loans in Washington under the names Nations and GAMC prior to the issuance of  
19 its license).

20 e. Records relating to active (pending closure) loans or loans originated in the  
21 month of September 1997.

22 8. The Department continued to demand access to all of Nations' records. On September  
23 25, 1997, the Department served Nations with Demand for Production of Records No. 97-083-  
24

1  
2 S04, repeating and clarifying its prior requests for information pursuant to Demands No. 97-083-  
3 S01 and S02 and Subpoena No. 97-083-S03. On October 28, 1997, the Department was provided  
4 with access to Nations' general accounting records and some loan files relating to the months of  
5 August and September 1997. To date, however, Nations has not complied fully with Demand No.  
6 97-083-S04.  
7

8 9. On November 26 and December 1, 1997, Nations informed the Department that it was  
9 forwarding files for the months of September and October to its Bellevue office. Such statement  
10 confirmed for the Department that Nations had not been maintaining records in compliance with  
11 the Act despite Judge Berschauer's order of September 16, 1997 (the Stay).  
12

13 10. On December 8, 1997, Nations delivered 25 loan files to the Department that had  
14 been originated in September, October and November 1997. On January 16, 1998, Nations  
15 delivered an additional 30 loan files to the Department for its review. On February 27, 1998,  
16 Nations delivered an additional 26 loan files to the Department for its review.  
17

18 11. On February 26, 1998, Cross was contacted by Battaglia who informed him that  
19 Nations had failed to maintain copies of complaint correspondence delivered to Nations by the  
20 Department between July 1995 and October 1996. In this conversation, Cross informed Battaglia  
21 that one of the Department's issues with Nations concerned records retention. Cross asked  
22 Battaglia to write to the Department stating that Nations no longer had possession of the  
23 complaint correspondence. Battaglia assured Cross that he would forward such a statement,  
24 however, the Department never received it.  
25  
26

1  
2 12. During its review of Nations' trust account, the Department identified several  
3 instances where Nations' received funds from consumers, but no loan file existed. These  
4 instances are listed by borrower and approximate transaction date:  
5

6	[REDACTED]	June 16, 1995
7	[REDACTED]	June 30, 1995
8	[REDACTED]	July 27, 1995
9	[REDACTED]	August 1, 1995
10	[REDACTED]	August 10, 1995
11	[REDACTED]	August 24, 1995
12	[REDACTED]	September 1, 1995
13	[REDACTED]	October 3, 1995
14	[REDACTED]	October 5, 1995
15	[REDACTED]	October 26, 1995
16	[REDACTED]	October 30, 1995
17	[REDACTED]	November 28, 1995
18	[REDACTED]	January 23, 1996
19	[REDACTED]	January 29, 1996
20	[REDACTED]	March 4, 1996
21	[REDACTED]	March 12, 1996
22	[REDACTED]	March 20, 1996
23	[REDACTED]	April 4, 1996

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20  
21  
22  
23  
24  
25  
26

[REDACTED]

May 3, 1996

[REDACTED]

June 12, 1996

[REDACTED]

June 17, 1996

[REDACTED]

June 19, 1996

[REDACTED]

June 24, 1996

[REDACTED]

July 17, 1996

[REDACTED]

June 3, 1996

[REDACTED]

July 31, 1996

[REDACTED]

July 31, 1996

[REDACTED]

August 2, 1996

[REDACTED]

July 27, 1996

[REDACTED]

August 22, 1996

[REDACTED]

August 27, 1996

[REDACTED]

August 27, 1996

[REDACTED]

September 16, 1996

[REDACTED]

September 27, 1996

13. During the first day of the September 17, 1997, onsite investigation Willis informed the Department's investigators that his supervisors had obviously "cleaned" or removed specific documents from most of the files. The Department performed a physical review of every file (over 500 files) provided by Nations. It was apparent to the Department that many items that

1  
2 should be in the file were not in the file. Chronically absent from almost all files were the  
3 following:

4 a. Conversation logs.

5 b. Estimated Cost Analysis worksheets.

6  
7 The Department identified conversation logs in enough files from 1995 through 1997, to  
8 be convinced that these documents were intended to be a part of the file records. Such records are  
9 important because of their contemporaneous recording of events and conversations between the  
10 borrower and Nations. The import of the logs to the Department's investigators is evident in a  
11 loan originated for [REDACTED] on October 9, 1995. On October 12, 1995, the log reads: "Per  
12 Steve borrower is going to cancel . . . wants a complete breakdown of fees . . . called borrower and  
13 left a message on his recorder to call me. Steve said if he starts asking about fees cancel loan."  
14 On November 10, 1995, the log reads: "[REDACTED] not a happy man . . . wants to know the  
15 terms and loan amount before anything else." On December 4<sup>th</sup> the log shows that [REDACTED] took  
16 his loan to another lender.  
17

18  
19 14. Estimated Cost Analysis worksheets (see section IV.H. of this order) are documents  
20 used by Nations to convince the borrower to accept the loan product offered. In its review of over  
21 500 files, the Department was able to locate less than ten Estimated Cost Analysis worksheets.  
22 However, a Document Signer Checklist found in dozens of files identifies that the Estimated Cost  
23 Analysis is intended to be in the file. Further, item number 21 in Nations' Document Signer  
24 instructions for maintaining the order of the file lists "Monster Form (Estimated Cost Analysis)"  
25 as a required file form.  
26



1  
2 Finally, 60 consumers have reported in writing to the Department that they received an  
3 Estimated Cost Analysis from Nations, and 12 of those consumers actually delivered copies of the  
4 document to the Department.

5  
6 15. In regard to the apparent missing file items, the Department's investigators were  
7 surprised to find that in nearly every file, bits of stripped away documents remained beneath the  
8 binder clips. In many instances, the investigators could shake the files and collect a large quantity  
9 of paper bits that fell free. A container of such document pieces has been maintained as evidence  
10 of file stripping.

11  
12 16. Identified in this section are repeated instances of Nations maintaining records in  
13 California, or failing to maintain records at all. Such instances are clear evidence to the  
14 Department of a pattern or practice by Nations of removing, withholding and secreting its records,  
15 and violating the records maintenance section of the statute and the rules. The Department  
16 supports its findings through:

- 17  
18 a. The Department's two onsite investigations in Bellevue;  
19 b. Statements by Willis under oath;  
20 c. Statements made by Buff, Battaglia and Smart to the Department; and  
21 d. Written statements by Buff, Battaglia, Smart and Tubbs.

22  
23 Although Nations may claim that it believed it held the Department's authorization to  
24 maintain books and records in California from April 1995 to June 24, 1997, the Department has  
25 made it clear in several writings to Nations and its attorneys subsequent to this period that no such  
26

1  
2 authorization was ever made and that all records were to be immediately returned to Washington.  
3 Nations still did not return its Washington records to Washington.

4 On September 16, 1997, the Superior Court Stay ordered Nations to comply immediately  
5 with the records maintenance section of the statute. The Department holds letters showing that as  
6 late as December 1997, Nations had not complied with the Stay by returning and maintaining all  
7 of its Washington records in Washington. The Department has reason to believe that to date,  
8 Nations does not maintain all of its Washington records in Washington.  
9

10 17. Identified in this section are repeated instances of Nations failing to comply with the  
11 Department's investigation authority. Such instances are clear evidence of a pattern or practice by  
12 Nations of failing to voluntarily comply with the investigation powers authorized under the Act  
13 and intentionally withholding records or other information or otherwise failing to comply with the  
14 Director's authority. The Department supports its findings through:  
15

- 16 a. The Department's two onsite investigations in Bellevue;  
17 b. Statements by Willis under oath;  
18 d. Statements made by Buff, Battaglia and Smart to the Department;  
19 e. Written statements by Buff, Battaglia, and Smart; and  
20 f. Nations failure to comply with three directives and a subpoena.  
21

22 While Nations has claimed that it feared disclosure of its records by the Department, such  
23 fears are not grounds for violating the statute. In any event, by August 18, 1997, a protective  
24 order by the court requiring the Department to inform Nations prior to disclosure of any  
25 documents was in place and Nations still had not made its records available to the Department.  
26

1  
2 On September 15, 1997, the Superior Court Stay further ordered Nations to comply with the  
3 Director's authority, however, Nations did not and as late as March 1998, the Department was  
4 awaiting delivery of records previously requested.

5  
6 Adding further weight to the Department's claims that Nations has failed to comply with  
7 its investigative authority is the discussion of Directive to Appear and Give Testimony Under  
8 Oath No. 97-083-S05. Pursuant to the Department's investigative authority, the Director "may  
9 direct or order the attendance of and examine under oath all persons whose testimony may be  
10 required about the loans or the business or subject matter of any investigation." The Department  
11 directed nine Nations employees to attend and be examined under oath. Nations protested the  
12 Department's authority in several letters only agreeing that certain employees would attend and  
13 the remainder (five employees) could only be examined by telephone and all of the examined  
14 individuals would only respond to questions concerning the Prater complaint. In a February 11,  
15 1998, letter from Battaglia, Nations' position is clear: "... it is important that we agree prior to the  
16 start of those depositions that the questions are going to be limited to the Department's  
17 investigation of the Prater complaint."  
18  
19

20 The Department considers Nations' response to be a continued attempt to control the  
21 process of the Department's investigation and usurp the statutory authority given the Director.  
22 The Department rejected Nations' terms of appearance and considers Nations' failure to appear as  
23 directed as a failure to comply.  
24

25 18. Identified in this section are items that have apparently been removed from Nations'  
26 loan files prior to the Department's opportunity to review those files. The Department considers

1  
2 the removal of a substantial number of documents from the files as clear evidence of a pattern or  
3 practice by Nations of withholding, abstracting, removing, mutilating, destroying or secreting  
4 records, or otherwise failing to comply with the Director's investigative authority. The  
5 Department supports its findings through:

6  
7 a. Statements to the investigators by Designated Broker Willis who is the  
8 responsible individual for these files;

9 b. File checklists and instruction manuals showing that the items are to be  
10 contained within the files; and

11 c. The Department's physical review of the files.  
12

13 B. CONSUMER QUESTIONNAIRE

14 Section Summary: *The Department mailed 371 questionnaires to consumers in January*  
15 *and February 1998. The questionnaires asked the consumers simple questions in regard to their*  
16 *transaction entered with Nations with the intent of ascertaining the extent of consumer harm*  
17 *perpetrated by Nations. The Department received 137 written responses (37%) including many*  
18 *consumers who provided additional writings and documentation of harm they had suffered from*  
19 *Nations. This section provides support to the Department's allegations that consumers have*  
20 *suffered actual harm at the hands of Nations and its owners and employees. While the*  
21 *Department is able to clearly document violations and establish Nations' intent to commit*  
22 *violations, the responses by consumers confirm the Department's belief that Nations' violations*  
23 *carried actual harm.*  
24  
25  
26

1  
2 1. The Department determined during its investigation that it would be beneficial to  
3 obtain consumer input supporting the violations found. The reason for the Department's decision  
4 was based upon the following:

5 a. The Department believed that much of the information contained within the  
6 loan files maintained by Nations was false or misleading, and pertinent information was missing.  
7 The Department's intent was to obtain independent support of i) the truth concerning dates of  
8 events and the actual occurrence of events; ii) the location and manner in which loans were  
9 originated by Nations; and iii) the existence of documents that were absent from the files during  
10 the Department's investigation.  
11

12 b. The Department's review of the Nations' Telemarketing and Document Signer  
13 Manuals revealed alarming sales practices that, if actually practiced upon consumers, would result  
14 in serious consumer harm. Asking consumers their experience with Nations was the best way to  
15 ascertain whether Nations had employed the sales tactics written in the manuals.  
16

17 2. A copy of the questionnaire sent to consumers is attached as Exhibits B.1 through B.2.  
18

19 3. The Department mailed 371 questionnaires to consumers in January and February  
20 1998. The Department received 137 written responses (37%) including many consumers who  
21 provided additional writings and documentation of harm they had suffered from Nations. A  
22 summary of some of the pertinent results from the questionnaire are given as follows:  
23

24 a. 53 consumers reported that they had conducted business with Nations from an  
25 out of state location.  
26

1  
2 b. 120 consumers reported that they had desired only a fixed rate mortgage (note  
3 that 66% of these consumers ended up with an adjustable rate mortgage).

4 c. 85 consumers reported that they had been attracted to Nations based on the  
5 promise of a low rate, low cost or low payment loan.  
6

7 d. 108 consumers reported that they had met with a Nations representative in their  
8 home on one or more occasions to complete the application and/or closing papers. Note that  
9 nearly 100% of Nations' loan applications falsely state that the borrower completed the  
10 application by mail. The Department believes that Nations marks the application as received by  
11 mail in an attempt to confuse the triggering point for required disclosures.  
12

13 e. 46 consumers reported that they had not received a Good Faith Estimate  
14 Disclosure within the state or federally required time frames.

15 f. 48 consumers reported that they had not received a Truth in Lending Disclosure  
16 statement within the state or federally required time frames.

17 g. 46 consumers reported that they were surprised<sup>14</sup> by the loan costs.

18 h. 27 consumers reported that they were surprised at the rate on their loan.

19 i. 20 consumers reported that they were surprised to receive an adjustable rate  
20 mortgage.  
21  
22  
23

24 <sup>14</sup> The term "surprised" was used by the Department in its questionnaire for simplicity and clarification by a  
25 greater number of consumers. While not all consumers readily understand the term "bait and switch," the  
26 Department felt that all consumers would be readily able to identify events that came as a "surprise" to them. The  
actual question posed to consumers was, "Were there any surprises concerning the cost, rate or terms of your loan  
(please explain)?"

1  
2 j. 54 consumers reported that they were surprised by some other element of the  
3 transaction.

4 k. 72 consumers reported that they were told by Nations that they could change  
5 their adjustable rate mortgage to a fixed rate mortgage.  
6

7 l. 34 consumers reported that they were not given ample time to read their closing  
8 papers before signing them.

9 m. 51 consumers reported that their questions about the loan were not answered.

10 n. 82 consumers reported that the terms of the loan were not what they had  
11 expected.  
12

13 o. 70 consumers reported that their loan had a prepayment penalty and 51 of  
14 those consumers reported that they were unaware that the penalty existed before they signed the  
15 closing papers.

16 p. 85 consumers reported that their loan did not turn out as they had expected or  
17 were promised.  
18

19 4. The Department has not relied exclusively on any of the consumer responses in making  
20 its findings. However, the Department has used the consumer responses to conduct more in-depth  
21 investigation, identify false statements or missing items and to support its conclusions after  
22 reviewing the documentary evidence.  
23

24 5. The responses do, however, present the Department with greater cause for concern that  
25 consumer abuse exists at Nations, than the Department previously realized.

26 ///

1  
2 C. SALES MANUALS USED FOR DECEPTIVE PURPOSES

3       Section Summary: *Nations uses sales manuals to instruct employees in the art of*  
4 *misrepresentation, deception, bait and switch practices and fraud against consumers. The*  
5 *manuals are the source document for what the Department believes is a scheme, device or artifice*  
6 *designed to mislead borrowers and convince them to accept loan products they would likely*  
7 *refuse if provided honest, forthright and clearly understood disclosures and explanations. These*  
8 *manuals demonstrate a systematic effort to train Nations employees in an integrated and highly*  
9 *effective scheme of deceiving and confusing consumers by, among other things, avoiding*  
10 *answering easy and relevant questions. To understand the manuals and their use by Nations'*  
11 *employees is to understand Nations' harmful sales practices upon consumers.*

12  
13  
14       1. Manuals identified as NATIONSCAPITAL MORTGAGE CORPORATION  
15 TELEMARKETING MANUAL ("Telemarketing Manual") and NATIONSCAPITAL  
16 MORTGAGE CORPORATION DOCUMENT SIGNER MANUAL ("Doc Signer Manual")  
17 were obtained by the Department's investigators from Willis on June 24, 1997. Willis identified  
18 these manuals as sales tools provided by Nations to its employees. The manuals are a guide to  
19 marketing techniques for Nations employees. The second page to both manuals entitled<sup>15</sup> HOW  
20 TO USE THIS MANUAL states, "You should study and re-study all information [in the manual]  
21 which directly affects your sales day. Many great sales people have started tremendous earnings  
22 careers just by learning the same information found here in this manual. By learning the track  
23  
24

25 \_\_\_\_\_  
26 <sup>15</sup> Sections quoted from the manuals are placed within quotation marks. Underlines, bold and capitals are as they appear in the manual. For readability, typographical errors are sometimes corrected.



1  
2 inside and out, and by learning as much information as possible about selling, you are off on a  
3 career path which will reward you in too many ways to count."

4 Another page in the Telemarketing Manual, identified as INTRODUCTION: Why we  
5 need the Track . . . states, "This is the Sales Track we run on at NMC. Your successful job  
6 performance is based on how well you are able to understand and present this Sales Track. It is  
7 used as a roadmap to help you along the way. You as a Customer Service Rep will be  
8 tremendously successful at NMC if you:

9  
10 A) Give an enthusiastic Track presentation.

11 B) Have the ability to use and handle objections.

12 C) Build rapport and trust with the customers to get the true purpose of the loan.

13  
14 We take this very seriously. You must combine your proven sales skills with an  
15 enthusiastic Track presentation."

16 The manuals are an accurate representation of how sales presentations actually occur on a  
17 day by day basis, and such written directions to Nations employees supports the Department's  
18 belief that much, if not all, of Nations' sales techniques, practices and teachings are contained  
19 within the Telemarketing Manual and the Doc Signer Manual themselves. This determination is  
20 based upon an extensive review of the manuals, an extensive review of the file records in loans  
21 originated by Nations and interviews with consumers subjected to the practices outlined in the  
22 manuals.

23  
24  
25 2. In order for the Department to fully comprehend the sales practices employed by  
26 Nations, it was necessary for the Department to analyze the manuals in conjunction with:

- 1  
2 i). an extensive document review of 371 consumer mortgage transactions  
3 originated by Nations;  
4  
5 ii). interviews with current and former employees of Nations, FAMCO and Coast  
6 Security Mortgage, Inc.<sup>16</sup>;  
7  
8 iii). interviews with consumers apparently harmed by the sales practices outlined  
9 in the manuals; and  
10  
11 iv). consumer responses to the Department's questionnaire.

12 The Department found that the practices outlined, directed or taught in these manuals  
13 constitute in part, a scheme, device or artifice to defraud or mislead borrowers; as well as, bait and  
14 switch practices to be executed upon Washington borrowers.

15 3. This section of the statement of charges analyzes specific pages of instructions  
16 contained within the Telemarketing Manual:

17 a. The common asked questions and the Responses . . . contains example  
18 questions and scenarios with the scripted response the Nations employee is to provide. Some of  
19 these questions and suggested responses follow:<sup>17</sup>

20 1. Q. "What's my rate?"

21 A. "Depends on what you qualify for . . . What rate do you want?" In  
22 preparation for this reasonable question by a consumer, Nations employees are instructed to  
23

24  
25 <sup>16</sup> These three companies are controlled by members of the Chisick family and employ versions of the FAMCO  
Track Manual when soliciting, originating and closing mortgage loans with Washington consumers.

26 <sup>17</sup> Direct quotes from the scripts are identified as such by quotation marks. Where the "Q" and "A" format of  
question and answer is used, Q will be the consumer and A will be the Nations employee.

1  
2 provide a non-answer to the consumer by asking a question of the consumer in turn. The  
3 question, "What rate do you want?" leads the consumer to believe that they have control over the  
4 rate obtained. According to many of the consumers interviewed, their question of "What's my  
5 rate?" was never answered, and they ultimately had no control over the rate given.  
6

7 2. Q. "Why can't I get a quote over the phone?"

8 A. "You want real #'s don't you?"

9 3. Q. "My rate is low! Why should I refinance?"

10 A. "What is your effective rate on total debt?" This answer, formed  
11 again as a question, leads the borrower to think that the "effective rate on total debt" is a common  
12 calculation that is important in determining what rate they should have, or that there is some  
13 complex and technical analysis to be performed on their debt position.  
14

15 4. Q. "Assuming everything is ok, what's my rate?"

16 A. "Depends on the market, shouldn't we start now?" Again, the  
17 borrower simply wants to know what mortgage rate is being offered by Nations, but does not  
18 receive an answer to this most basic financing question.  
19

20 5. Q. "FAMCO? Click!"

21 A. "Try again 24 hours later." Although not readily apparent, this  
22 scenario addresses situations where the borrower has already had a sales experience with  
23 FAMCO. The Department has found that many of Nations marketing leads are obtained from  
24 failed FAMCO attempts.  
25

26 6. Q. "What are costs?"

1  
2 A. "Nothing to find out your options." Here the borrower simply wants  
3 to know how much in fees and other costs they will incur by closing a mortgage originated by  
4 Nations. As with questions about rate, the borrower is apparently never to be provided with a  
5 direct or honest answer to the question of "cost." One of the main complaints registered with the  
6 Department by consumers is that they either had no idea of the cost ultimately incurred or they  
7 had been mislead about what the costs would actually be.  
8

9 7. Q. "What will be my payment?"

10 A. "The one you choose!" Again, a non-answer to a direct and important  
11 question. Several consumers have reported to the Department that their payment was greater than  
12 they could ultimately afford. Unsolicited by the Department's questionnaire were 26 responses  
13 from consumers that they had been deceived into believing that their monthly payment would  
14 include taxes and insurance.  
15

16 8. Q. "I want something in writing before I give the paperwork."

17 A. "You'll get required forms." The Department's investigation shows  
18 that in 643 loans originated by Nations from May 30, 1995 to present, the borrowers did not get  
19 the required forms.  
20

21 b. COST/POINTS. This page provides the Nations employee with scripted  
22 answers when the borrower wishes to know what the cost of the loan and loan points will be. As  
23 can be seen, the borrower does not receive an answer to the question:  
24

25 1. "Actually (name) cost varies from program to program in fact (back to  
26 track)."

1

2

2. "That's one of the major benefits of working with a direct lender.

3

4

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There's no middle man broker expense." Not only is the borrower's question unanswered here, but the Nations employee lies about Nations' role in the transaction. Nations, as a mortgage broker, is clearly the "middle man" brokering the loan to an actual lender. Many consumers informed the Department that they believed Nations was the lender on their loan, when Nations clearly was not.

3. "Sounds like what your saying is that you want the most cost effective program you qualify for, is that right? Okay great, the good news is here at NMC we fund our loans. What this means to you is not only will we be able to provide you with a cost effective program, but it looks like we'll be able to (hot button, 3 benefits) and that's what you want isn't it?" Again, the consumer does not receive an answer to the question about the cost of the loan. Further, only in a few occurrences was the Department able to identify Nations as the lender in the transaction. In these cases, Nations did not fund the loans with its own money, but rather used a line of credit provided by another lender.

c. RATE OBJECTIONS. This page in the Telemarketing Manual provides Nations employees with scripted answers when the consumer is insistent on an answer concerning rate. As can be seen from the script excerpts below, the consumer does not receive an answer to the question:

1. "That's a good question. I'm going to gather some basic information and have an underwriter look at this."

1  
2 2. "Actually name, everything is a little different for the different  
3 programs as well as your overall qualifications."

4 3. "What types of rates were you looking for?"

5  
6 4. "At this point we have many different programs available and it's really  
7 going to be based on what you're trying to accomplish." The Department's analysis shows that  
8 approximately 79% of all loans closed by Nations are 30 year adjustable rate mortgages of similar  
9 program characteristics.<sup>18</sup>

10 5. "Now name, being a mortgage lender as well as a broker, we work on  
11 a much more professional and ethical level."

12  
13 d. IDEAS FROM THE FIELD. Customer won't go along with our procedure.  
14 What are your rates? Costs, Etc. . . As with the previous pages discussed above, this page  
15 provides the Nations employee with a scripted response to situations where the consumer is not  
16 satisfied with the previous diversionary answers. Some excerpts from this page are:

17 1. "Obviously the reason you want these facts is so you can make an  
18 intelligent decision, right? Well I need these facts, too, so I can give you accurate information,  
19 OK?" The employee is then instructed to ". . . go right into the worksheet." It is important to  
20 note here, that the borrower is unlikely to receive accurate information after this point. This  
21 determination is based upon an extensive review of the manuals, an extensive review of the loan  
22 file documents, and interviews of consumers subjected to Nations' sales techniques.  
23  
24

25  
26 <sup>18</sup> This statistic is based on a random sample of over 200 loans originated and closed by Nations.

1  
2 2. "There is no cost to find out what you qualify for! (Say with  
3 enthusiasm)."

4  
5 3. Q. "I want 8 ½ rate."

6 A. "Of course you want the best rate possible. Intelligent people always  
7 do." Or, "Would you rather have a 30 year loan at 5%, or a 5 year loan at 30%?" Neither of these  
8 loans are available through Nations.

9  
10 4. Q. "I don't want to go through with this 'crap.' Just tell me your  
11 program."

12 A. "Mr. Jones, if I offered you a 5% loan for 30 years or a 30% loan for  
13 5 years, which would you choose?" The script instructs, "They'll always choose the 5% loan."  
14 To which the employee is to say, "Did you know that both loans cost you the same amount of  
15 money?"

16 e. ACCENTUATE BENEFITS (POSITIVES). This page highlights the benefits  
17 a consumer can expect when conducting a loan transaction with Nations. One of the highlights  
18 presented on this page is "No surprises." However, the Department received 147 responses that  
19 showed consumers were "surprised" to find that the costs, rate or program originally sold to them  
20 was not what they ultimately received.

21  
22 f. Basic Rules. This page attempts to teach the Nations employee how to "paint a  
23 word picture" for the consumer. Important in the instructions here is the command in bold "**Scare**  
24 **them if necessary!!!**"  
25  
26

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g. The Telemarketing Manual contains 17 pages under a section entitled Handling Objections. Some of the instructions to the Nations employee in this section are:

1. "If your customer changes objections under pressure, he or she reveals hollow excuses – not real objections." Implied here is that the consumer will be pressured when objections to Nations' offer are raised.

2. "Remember, if there were no objections, salespeople wouldn't be needed. Remember you are a professional representative of NATIONSCAPITAL – YOU ARE NEEDED TO HANDLE OBJECTIONS."

3. "BECAUSE THE \_\_\_\_\_ WON'T EVEN BE AN ISSUE, THAT'S HOW COMPETITIVE WE ARE."

4. "WE ARE THE LENDER AND WHAT THIS MEANS TO YOU IS THERE ARE NO MIDDLE MAN BROKER FEES. THERE ARE NORMAL COSTS SUCH AS PROCESSING, TITLE, AND ESCROW THAT ARE STANDARD FOR THE INDUSTRY BUT THOSE ARE MINIMAL . . ." This statement is obviously meant to deceive the borrower. Nations is seldom the lender and in every transaction the Department noted substantial "middle man broker fees" charged by Nations.<sup>19</sup> In addition, the Department has reason to believe that the processing fee (\$695.00) and escrow (\$750.00) charged by Nations (or Riverview) are much higher than the industry norm in Washington.

<sup>19</sup> The Department analyzed over 200 loan files and determined that on an average loan amount of \$109,000, Nations averaged 8% in fees or almost \$9,000.



1  
2 5. In responding to questions about the amount of payment the Nations  
3 employee is instructed to respond, "THE PAYMENT REALLY DEPENDS ON THE TERM OF  
4 THE LOAN. DID YOU WANT TO GO 15 OR 30 YEARS? GREAT, I'LL MAKE A NOTE  
5 OF THAT . . . CHANGE SUBJECT!" Again, an easy answer is avoided and it is clear from this  
6 script that Nations has no intention of providing the borrower with any meaningful answer to their  
7 question. Additionally, the Department found no fifteen year loans made by Nations to  
8 Washington consumers.  
9

10 6. "SO WHAT YOU'RE SAYING IS YOU WANT TO BE ASSURED  
11 YOU GET THE VERY BEST RATE YOU QUALIFY FOR ON THE MARKET TODAY,  
12 RIGHT?"  
13

14 7. "AS I SEE IT, THE ONLY DECISION YOU WILL HAVE TO  
15 MAKE WHEN WE'RE THROUGH HERE IS JUST DECIDING WHICH LOAN BEST SUITS  
16 YOUR NEEDS." Many consumers have reported to the Department that they had no choice in  
17 the final loan product given to them by Nations.  
18

19 8. This section instructs Nations employees in THE SMOOTHY CLOSE.  
20 The manual tells the employee that this technique is "TO BE USED IF THE CUSTOMER ASKS  
21 FOR THE RATE AFTER THE APPOINTMENT HAS BEEN SET, OR IF THEY ASK WHAT  
22 THE COST IS." In such situations the employee is to say, "AGAIN IT DEPENDS ON WHAT  
23 YOU QUALIFY FOR, BUT WHAT I CAN TELL YOU IS OUR LOANS ARE FULLY  
24 AMORTIZED, AND WE CAN GO ANYWHERE [FROM] SIX MONTHS TO THIRTY  
25 YEARS, AND YOU DO WANT FLEXIBILITY, DON'T YOU?" This answer provides nothing  
26

1  
2 but confusion for the borrower. With a few exceptions, mortgage loans always "fully amortize."  
3 The rest of the statement is ambiguous and leads the borrower to believe that somehow a Nations  
4 loan provides them with flexibility. If the borrower presses the employee for the information and  
5 asks if they could at least provide a range of rates or cost, the Nations employee is to respond,  
6 "ALL OF OUR LOANS ARE VERY COMPETITIVE AND WE'RE NOT TALKING ABOUT  
7 SOME FINANCE COMPANY RATE LIKE 14% OR 15%. I CAN TELL YOU RIGHT NOW  
8 WE WOULDN'T WASTE OUR TIME AND MONEY GOING THROUGH THIS PROCESS IF  
9 WE DIDN'T THINK WE COULD WRITE YOU A GOOD LOAN. . . THE ONLY DECISION  
10 YOU ARE GOING TO HAVE TO MAKE IS WHETHER OR NOT YOU ARE READY TO  
11 TAKE THE LOAN BECAUSE THE RATE WON'T EVEN BE AN ISSUE." An easy answer is  
12 again avoided. 59 consumers reported to the Department that low rate was an issue. The  
13 Department also received 161 reportings that the terms of their loan were not what they expected  
14 or were promised.

15  
16  
17 h. Perhaps the most telling direction to the Nations employee in using the  
18 Telemarketing Manual is "it's not WHAT you SAY IT'S HOW YOU SAY WHAT YOU SAY!"  
19

20 4. This section of the statement of charges analyzes specific pages of instructions  
21 contained within the Doc Signer Manual:

22 a. PRE GAME<sup>20</sup>. This page contains the initial instructions to the employee in  
23 arranging the loan closing papers for signing at the borrower's residence. The instructions  
24 repeatedly remind the employee that there is a system for best presenting the closing papers to the  
25  
26

1  
2 borrower to avoid objections: "YOU MUST USE THIS STACKING ORDER." The Pre Game  
3 appears to be a crucial step in convincing wary or reluctant borrowers to accept the loan being  
4 offered by Nations. The instructions state "The stacking order will help you organize objections  
5 and maintain control of the conversation. Do not stray from this order!!!" Apparently by doing  
6 so, easy answers are again avoided.  
7

8 The Department's questionnaire response shows that 34 consumers felt that they were not  
9 provided adequate opportunity to read the closing documents at the time of signing. 51  
10 consumers reported that their questions about the loan at signing were not answered, and 87  
11 reported that the closing process was confusing and/or uncomfortable.  
12

13 It is apparent to the Department that the techniques developed through the Doc Signer  
14 Manual and used by the Nations employees is designed to create or enhance the borrower's  
15 confusion at closing to avoid the obvious objections the borrower might otherwise have raised.  
16

17 b. Typed 1003: Several pages in the instructions are devoted to convincing the  
18 borrowers to sign the typed application form at closing. In a section identified as Objections the  
19 manual provides the following scenario and script to follow with borrowers reluctant to accept a  
20 rate higher than that previously promised by Nations:  
21

22 Borrower: "I told my loan officer that I wouldn't go over seven percent. This  
23 says here eight percent? I don't want an eight percent loan."  
24

25 Doc Signer: "I think we may have a small difference here probably due to  
26 (STATE HARM) those late payments on your Mervyn's, the loan officers are generally more

<sup>20</sup> "Pre Game" is a term apparently coined by Nations.

1  
2 interested in the total benefits of the loan, they're not just interested in the rate. Because the  
3 bottom line here is we all want to save dollars, isn't that right?"

4 Borrower: "I guess so, but I don't want eight percent."

5 Doc Signer: "I understand how you feel. Many of the borrowers I help have felt  
6 the same way. But once I go over the total benefits of their loan with them and once they see how  
7 many actual dollars they are saving, they have found that it was well worth going over all the  
8 papers before deciding, now that sounds fair, doesn't it?"

9  
10 Borrower: "I am getting my ten thousand dollars, right?"

11 Doc Signer: "Is that what your loan officer told you were getting?"

12 Borrower: "Oh yes, ten thousand, that's why I'm doing the loan."

13 Doc Signer: "Well, if that's what your loan officer has arranged I'm sure that's  
14 what it is. You'll need to call him/her to verify that if you want."

15  
16 "FINAL SOLUTION: IF BORROWER HAS NOT BEEN SOLD ON RATE  
17 AND PAYMENT, AND YOU CANNOT SELL THE BORROWER ON BENEFITS, CALL  
18 THE LOAN OFFICER." An easy answer is again avoided.

19  
20 It is important to note that the Department has received complaints from borrowers that  
21 they never received the amount of cash that they had been promised in the transaction, because the  
22 expected cash back had been absorbed by fees to Nations. At signing of closing papers, there  
23 should be no doubt as to the exact amount of loan the borrower is committing to, and the exact  
24 amount of costs to be incurred or cash to be received. The doc signers not only have this  
25

1  
2 information within the closing papers at signing, they have a duty to inform the borrower of the  
3 details they are committing to.

4 13. ESCROW PAPERS. This page of instructions refers to some of the escrow papers to  
5 be signed in the package of closing documents. Here the manual provides a scenario where the  
6 borrower is concerned about the amount of loan they appear to be committing themselves to. The  
7 key to these instructions is the Nations employee's ability to steer the borrower away from the  
8 actual loan amount they will be obligated to repay:  
9

10 Borrower: "Now, what's this Seventy five thousand dollars right here on this paper?"

11 Doc Signer: "Oh, well the Escrow Company is just showing you the amount there but  
12 that isn't your amount financed and I'm going to show you these figures and go over all the  
13 amounts in a few seconds . . ."  
14

15 Borrower: "Is that the amount of my loan?"

16 Doc Signer: "Make no mistake about it this is not the amount financed. Let me explain  
17 to you." However, the doc signer does not proceed to provide an explanation and consumers have  
18 informed the Department that they believed the amount financed to be the loan amount.<sup>21</sup> The  
19 Doc Signer Manual goes on to instruct the employee as follows: "THE IDEA IS TO PASS BY  
20 THE FIRST OBJECTION CONCERNING THE DIFFERENCE BETWEEN THE LOAN  
21 AMOUNT AND THE AMOUNT FINANCED."  
22  
23

24 <sup>21</sup> The amount financed is determined by subtracting the prepaid finance charge from the principal amount of the  
25 loan shown on the contractual obligation. The bulk of the prepaid finance charge is comprised of fees to the  
26 mortgage broker; in this case, Nations. When the borrower is led to believe that the amount financed is the same

1  
2 These instructions to the loan officer provide further direction when the borrower presses  
3 about the apparent loan amount:

4 Borrower: "Well there's that number of 74 thousand again, and it says loan amount.  
5 Is this my loan amount?"  
6

7 Doc Signer: "I will explain this in a few seconds when I get to the full disclosure and  
8 have all the numbers in front of us but I'll tell you what, I'm not going to leave here if you don't  
9 understand something. We have all the time in the world. I just want to have all the facts in front  
10 of us so you can understand everything completely. Because the Federal Government isn't  
11 clearing up anything for anyone, they seem to always make things so complicated, I'd like to  
12 make sure everything is clear to you. Now, that sounds fair, doesn't it?"  
13

14 The Federal Government's intent with these requirements is to see that the borrower is  
15 fully informed of the cost of the loan. When the doc signer diverts the borrower's attention away  
16 from the actual amount of the loan, they effectively divert the borrower's attention away from the  
17 substantial costs accruing to Nations. The strategy is to make it appear as if the federally required  
18 disclosures are the point of confusion rather than Nations itself. An easy answer is again avoided.  
19

20 14. DEED OF TRUST. Contained within this set of instructions is a script concerning  
21 how to deal with borrower's who do not want the adjustable rate mortgage being sold by Nations:

22 Borrower: "I don't want an adjustable, I only want a fixed rate."  
23  
24

25  
26 as the loan amount, they are unaware that they are obligating themselves to a greater amount of principal (usually  
several thousand dollars) and the difference is direct compensation to the creditors, including Nations.

1  
2 Doc Signer: "Your loan officer is trying to re-establish your credit to allow you to earn  
3 a preferred fixed rate. This way we can get you a good rate, save you money now, and also help  
4 you earn a good fixed rate after one year, that's what you want, isn't it? (USE REFI LETTER  
5 NOW IF YOU HAVE TO)." The refi letter referred to here has been found by the Department in  
6 some of the borrower loan files. The document states that Nations will accept a borrower's  
7 application for refinancing the property at a certain point in the future, yet makes no assurances to  
8 the borrower that a conversion to a fixed can actually take place. The document states,  
9 "NATIONSCAPITAL MORTGAGE HEREBY AGREES TO PROCESS AND SUBMIT TO  
10 PROSPECTIVE LENDERS YOUR REQUEST FOR A REFINANCE FROM AN  
11 ADJUSTABLE LOAN TO A FIXED RATE LOAN WITHIN A 12 MONTH PERIOD..."

12  
13  
14 While the Department finds no violation or fault within the language of this statement  
15 itself, the statement also holds no relevant value for a borrower wishing to change their future  
16 situation. Any mortgage broker would be willing to "submit to prospective lenders" the  
17 consumer's application for a refinance, with or without such reassurance. When coupled with the  
18 instructions in the Doc Signer Manual, it is the "delivery" of this letter and spoken assurances that  
19 go beyond the written assurance that are the act of deception.  
20

21 The manual instructs the employee only to use the letter if they have been unsuccessful in  
22 convincing the borrower that they can somehow get out of the adjustable rate loan. This refinance  
23 letter is contrary to what borrower's say has been told to them at signing by Nations. In fact, 72  
24 borrowers have reported to the Department that they were told that they could change their loan  
25 from an adjustable rate to a fixed rate automatically provided they had not been late on payments  
26

1  
2 and had not incurred any additional debt on the property. When asked about the letter by the  
3 Department, borrowers stated that they had believed that the letter was some form of assurance  
4 that they could get out of a loan they did not really want. Several borrowers have reported that  
5 after 12 months they attempted to effect the "promised" automatic change to a fixed only to be  
6 rebuffed by Nations.  
7

8 This section of the manual continues:

9 "If customer continues to object over adjustable rate:"

10 Borrower: "I just don't want my payments to go up."

11 Doc Signer: "Well I can certainly understand that. But you do want to eventually earn  
12 a fixed rate right?"  
13

14 Borrower: "Well, yes, that's what I want."

15 Doc Signer: "Exactly. So to help you earn that fixed rate, your loan officer has set you  
16 up with this special adjustable rate product which will allow you to do that, and that's what you  
17 want isn't it?" An easy answer is again avoided. The Department has reviewed hundreds of  
18 Nations' adjustable rate loan files and is unable to determine how the adjustable rate product  
19 "allows" the borrower to "earn" a fixed rate. Further, the Department identified no instances  
20 where a borrower was allowed to convert their adjustable rate mortgage to a fixed rate mortgage  
21 without a costly refinance.  
22

23  
24 - 15. MONSTER DISCLOSURE. The Monster Disclosure is believed by the Department  
25 to be one of the primary forms of deception and misrepresentation used by Nations. As such, it is  
26 discussed under section IV.H. of this order. The following script is provided as support to the



1

2 Department's allegation that the Doc Signer Manual is part and parcel of the overall practice of  
3 deception:

4 Doc Signer: "I'm noticing that the [Nations] loan officers are concentrating on total  
5 dollars as opposed to the rate or incidentals that aren't as important as bottom line dollars. This  
6 could be the most important relevant thing to you in all of these papers, because what I'm about to  
7 explain are some hard facts about saving money. We all want to save money right?"

8  
9 Borrower: "Yes who doesn't?"

10 Doc Signer: "Exactly. Who doesn't? What your loan officer has done is to comply  
11 with all of the new Federal regulations which make all of this quite confusing. What the Federal  
12 government has done basically, is to say that we are not intelligent enough to know that the reason  
13 that the biggest buildings in town are banks is because of the interest people pay them. They  
14 make a lot of money by lending you money over a long long period of time. The Federal  
15 government has stepped in and said that they want it in writing that people understand that it costs  
16 a lot to borrow money. So obviously, we abide by all federal laws and you are going to get the  
17 privilege of seeing all these disclosures, like it is not something you already know." An easy  
18 answer is again avoided.

19  
20  
21 The offense here is that Nations has again attempted to sell the borrower on the idea that  
22 the government, not Nations, is creating confusion in the loan process. As discussed in sections  
23 II.D. and E. of this order, Nations has failed repeatedly to provide borrowers with the federally  
24 required disclosures despite the script's claim. The federal disclosures referred to here (apparently  
25 the Good Faith Estimate and Truth in Lending Disclosure Statement) are designed not to inform  
26

1  
2 the borrower that "it costs a lot to borrow money," but rather how much it will cost the consumer  
3 to borrow money from this set of creditors. For a mortgage broker to present this in any other  
4 manner is deceptive and a violation of the Act.

5  
6 16. FEDERAL TRUTH AND LENDING. This page (which actually refers to Truth "in"  
7 Lending) has the officer explain that the annual percentage rate ("APR") "is based on a very  
8 complicated government formula. It takes into account the amount of cash you get (if any), the  
9 cash you have each day, minus the dollars you pay back." The Department's analysts are unable  
10 to determine what this explanation means, however, it is not the definition or an explanation of  
11 APR. The instructions go on to say, "Now, this formula is supposed to tell you the true cost of the  
12 loan, but it's really a contradictory figure. Remember, the longer you keep a loan the lower the  
13 'APR' will be but the more it will cost you (in interest). The shorter the term, the higher the  
14 'APR' will be but you will pay less for that loan (same money on interest)."  
15

16 Contrary to Nations' claims, the APR only becomes a contradictory representation when  
17 presented incorrectly. APRs on a shorter term loan will not be higher than on a longer term loan  
18 when the actual or true rates are applied. In mortgage transactions the rate will be lower on a 15  
19 year fixed than on a 30 year fixed. The spread difference usually being in the range of 1/2%. As an  
20 example, a \$100,000 loan amount with assumed prepaid finance charges of \$5,000, would present  
21 the following APRs for the following terms and rates:  
22

23 15 YEAR FIXED

24 6.75% = 7.58% APR

25 30 YEAR FIXED

26 7.125% = 7.65% APR

1  
2 Even when analyzed with a rate spread of  $\frac{3}{8}\%$  rather than  $\frac{1}{2}\%$ , the resulting APR is  
3 lower for the shorter loan than the longer loan. The APR was developed to provide the consumer  
4 with an accurate and useful interpretation of rates and cost, not as a point of confusion as stressed  
5 by Nations.

6  
7 This section adds further misinformation about the APR as follows:

8 Borrower: "Why is my APR so high?"

9 Doc Signer: "Well, we're talking about costs for a 30 year loan squeezed into one year  
10 (read box). You've see those car commercials where they offer you a very low APR haven't you?  
11 Right. Ask that car salesperson what the APR will be if you pay it all in one year!" An easy  
12 answer is again avoided.  
13

14 Again, deception is the key here. Few car loans and no Nations loans are established with  
15 a one year maturity. Regardless, the APR is given for the time period of the loan proposed, not  
16 some other time period. The point of the APR is to present the true cost of the loan over the life  
17 of the loan. The APR certainly does not "squeeze" the loan's cost into a single year unless that is  
18 the contractual length of the loan. If it were the contractual length of the loan, the calculation  
19 would be based upon a 12 month amortization period rather than a 360 month amortization  
20 period.  
21

22 On June 24, 1997, Cross found under direct questioning, that Willis and Johnson  
23 understood very little about the Truth in Lending Disclosure Statement. Based on the Doc Signer  
24 Manual it would appear that Nations as a company either has little understanding of the Truth in  
25 Lending Act, or intentionally uses its knowledge to confuse the consumer. Regardless, Nations'  
26

1  
2 instructions to its loan officers concerning the nature of the Truth in Lending Disclosure  
3 Statement are deceptive, misleading and potentially harmful to borrowers.

4       17. PAYMENT LETTER TO BORROWER. This section of the manual instructs the  
5 Nations employee how to deal with prior promises that the borrower's taxes and insurance  
6 payments will be included in the monthly payment amount. The obvious incentive here is to  
7 show the borrower a payment in which they believe these amounts are included in order to avoid  
8 payment shock by the borrower. By leading borrowers to believe that the payment shown  
9 includes more than it does, the high payment, which is likely attached to a greater amount of loan  
10 than the borrower has been shown, becomes less suspect. 26 borrowers reported to the  
11 Department that they had been deceived into believing their taxes and insurance were included in  
12 the monthly payment amount. The script reads:

13  
14  
15       Borrower:     "Are my taxes and insurance included in this payment?"

16       Doc Signer:   "O.K. Did you inform your loan officer that you wanted your taxes and  
17 insurance taken care of in this?"

18  
19       Borrower:     "Oh yes, I have to take care of those."

20       Doc Signer:   "All right, no problem. You should call your loan officer to discuss this  
21 with him, but I know that it is not difficult to set these up at all. As long as your are going to talk  
22 to your loan officer about this, why don't you approve this right here."

23       Borrower:     "But are they (taxes and insurance) included in this payment?"

24       Doc Signer:   "Did your Loan Officer tell you they were?"

25  
26       Borrower:     "Yes."

1  
2 Doc Signer: "If your Loan Officer told you he/she did them, I'm sure it's going to be  
3 taken care of . . ."

4 Borrower: "But won't my payments go up?"

5 Doc Signer: "Well, of course they are reassessing taxes all of the time so there might be  
6 some slight adjustments. By the way, (Immediately ask a question)."  
7

8 What is implied here is that the doc signer has no knowledge whether the payment  
9 included taxes and insurance. However, the documents presented by the doc signer at closing  
10 contain specific information in several locations identifying whether the payment includes  
11 anything other than principal and interest. An easy answer is again avoided.  
12

13 18. NOTARY AND FINAL CYA. This section of instructions refers to the "Final  
14 CYA." According to the instructions, the document is an approval by the borrower "that you  
15 understand everything and that I've gone through everything." The question is, how is the  
16 borrower to know if everything is covered that is required by law to be covered? The burden, by  
17 law, is on the mortgage broker to make sure that the borrower has received all of the required  
18 disclosures.  
19

20 The Department found that the vast majority of Nations' loan files contained this Final  
21 CYA disclosure, however, none of the files showed that the borrowers had received adequate  
22 disclosure as required by both state and federal law.  
23

24 19. COMMON OBJECTIONS. This section of the Doc Signer Manual focuses on  
25 additional objections raised by the borrower and how to control or avoid them. One scenario for  
26 borrowers insisting on knowing the points charged in the loan transaction is as follows:

1

2 Borrower: "How much are the points?"

3 Doc Signer: "The points are a portion of the Total Finance Charge and will be itemized  
4 for you when the documents are drawn."

5 Borrower: "But, I want to know how much they are before I have you draw up the  
6 documents."

7  
8 Doc Signer: "The total amount of the Prepaid Finance Charge amounts to  
9 approximately % of the gross amount of the loan. The interest rate on your loan is 13.25% per  
10 year. If you break down the costs per year, it amounts to a little over 1 1/3 % per year, and added  
11 to your rate it comes to approximately 14 1/4% per year over the life of the loan."

12  
13 Borrower: "Exactly what are points?"

14 Doc Signer: "Points are what a bank would charge for a loan. Nationscapital Mortgage  
15 Corp. has what's known as a PPFC. . . The good news is that it's already included in the Total  
16 Finance Charge." An easy answer is again avoided.

17  
18 Although the borrower has not received an answer to their question, they have been  
19 mislead into thinking that Nations somehow has a feature known as "PPFC" that is not as bad as  
20 points on a loan. PPFC stands for prepaid finance charge and is one of the items disclosed by all  
21 creditors and mortgage brokers on the Truth in Lending Disclosure Statement. By telling the  
22 borrower that there is "good news . . . it's already included in the Total Finance Charge," Nations  
23 implies that with their loans there are no additional costs related to loan points.

24  
25 20. DISCLOSURE OF THE PREPAYMENT PENALTY. Prepayment penalties are  
26 discussed as a separate issue of deception under section IV.G. of this order. However, for

1  
2 purposes of analyzing the Doc Signer Manual and the impact on borrowers of its use, the  
3 following section of the manual is quoted:

4 "This is how to turn a negative into a definite positive. In referring to the Prepayment  
5 Penalty, we present it as follows: As in every real estate loan, Mr. and Mrs. Prospect, there is  
6 always a Prepayment Penalty. According to the law, this is 6 months interest on the balance of  
7 the loan less 20% of the original amount of the loan." These statements carry two false and  
8 intentionally deceptive statements. The first fallacy is that every real estate loan has a prepayment  
9 penalty. "Most" real estate loans do not have a prepayment penalty, and many of the loans  
10 originated by Nations do not even have a prepayment penalty. The second fallacy is that there is a  
11 law dictating the calculation or amount of a prepayment penalty when no such law exists, and in  
12 fact, some federal and state regulations and requirements specifically prohibit prepayment  
13 penalties.<sup>22</sup> The only accurate reference in this section is to the calculation itself, which is the  
14 prepayment calculation shown in the majority of loans originated by Nations.

#### 15 16 17 18 D. FAILURE TO PROPERLY MAKE REQUIRED DISCLOSURES

19 Section Summary: *This section focuses on Nations' failure to properly make disclosures*  
20 *as required by the Act. The Department found that Nations was in violation of the disclosure*  
21 *requirements in over 600 loan transactions originated for consumers. This failure to properly*  
22 *make disclosures continued well beyond the Superior Court Stay ordering Nations to make all*  
23 *required disclosures. Such actions are considered intentional and a part of Nations' scheme to*  
24 *mislead consumers.*  
25  
26

1  
2 1. The Department has found serious compliance violations by Nations in the content and  
3 delivery of disclosures required pursuant to RCW 19.146.030 and RCW 19.146.0201(10)<sup>23</sup>. Such  
4 violations are systemic in nature and exhibited by all employees and in every file reviewed by the  
5 Department (the Department has performed extensive review of over 371 loan files maintained by  
6 Nations and a cursory review for disclosure compliance in approximately 275 additional files).

8 2. The Department's investigative procedures for determining compliance with disclosure  
9 requirements included:

- 10 a. Discussions with and testimony from Willis, Johnson and Buff.  
11 b. Correspondence with Willis, Buff, Chisick, Battaglia, Smart and Tubbs.  
12 c. Investigation of consumer complaints filed against Nations.  
13 d. A detailed review and analysis of the Nations Telemarketing and Doc Signer  
14 Manuals.  
15

16 e. A detailed review of all files originated and funded with consumers in  
17 Washington and a limited scope review of all canceled files. This review consisted of the  
18 following analysis:  
19

- 20 i. The content of disclosures given.  
21 ii. The timing of disclosures given based upon documentable support  
22 within the loan file.  
23

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24 <sup>22</sup> See WAC 208-620-130(7), 24 CFR 201.17 and 203.22, and Section 32 of Regulation Z.

25 <sup>23</sup> Prior to 7/21/97, this section was covered in combination by RCW 19.146.0201(11) and RCW 19.146.030(4).  
26 For purposes of investigative findings, the Department refers in this section to the requirements carried under the



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iii. Disclosures clearly not provided to consumers at all.

iv. Disclosures claimed to have been provided that have been determined to not have been provided.

v. Interviews with consumers concerning disclosures received or not received.

vi. Written response from consumers to the Department's questionnaire.

3. Pursuant to the Act a mortgage broker must make specific "state"<sup>24</sup> disclosures. Both the content and timing of the disclosures are clearly mandated within the law. In 1995, the Department drafted model disclosure forms and distributed these to all mortgage brokers including Nations. While the use of the model forms is not a requirement, WAC 208-660-130(1) and (2), requires that any other disclosures be acceptable to the Director.

4. The content of each state disclosure is as follows:

a. RCW 19.146.030(2)(a). The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an

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new sections of the statute. For purposes of penalties the Department will refer formally to the citation current at the time the violation occurred.

<sup>24</sup> A delineation is made here between "state" and "federal" disclosures. Both are required under the Act, however, the requirements are separated under the statute and therefore are discussed as separate disclosures here. It must be noted, however, that two of the state disclosures are substantially satisfied by two of the federal disclosures.

1  
2 increase, and an example of the payment terms resulting from an increase. Disclosure in  
3 compliance with the requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and  
4 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply  
5 with the disclosure requirements of this subsection. For purposes of this order, this disclosure  
6 is referred to as the Truth in Lending Disclosure Statement ("TIL Disclosure" or "TIL").  
7

8           b. RCW 19.146.030(2)(b). The itemized costs of any credit report, appraisal,  
9 title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance,  
10 structural or pest inspection, and any other third-party provider's costs associated with the  
11 residential mortgage loan. Disclosure through good faith estimates of settlement services and  
12 special information booklets in compliance with the requirements of the real estate settlement  
13 procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now  
14 or hereafter amended, shall be deemed to comply with the disclosure requirements of this  
15 subsection. For purposes of this order, this disclosure is referred to as the Good Faith Estimate  
16 Disclosure ("GFE Disclosure" or "GFE")  
17

18           c. RCW 19.146.030(2)(c). If applicable, the cost, terms, duration, and  
19 conditions of a lock-in agreement and whether a lock-in agreement has been entered, and  
20 whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in  
21 agreement has not been entered, disclosure in a form acceptable to the director that the  
22 disclosed interest rate and terms are subject to change. For purposes of this order, this  
23 disclosure is referred to as the Rate Lock Disclosure.  
24  
25  
26

1  
2 d. RCW 19.146.030(2)(d). A statement that if the borrower is unable to obtain  
3 a loan for any reason, the mortgage broker must, within five days of a written request by the  
4 borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to  
5 the borrower, and transmit the appraisal, title report, or credit report to any other mortgage  
6 broker or lender to whom the borrower directs the documents to be sent. For purposes of this  
7 order, this disclosure is referred to as the Third Party Provider Reports Disclosure.  
8

9 e. RCW 19.146.030(2)(e). Whether and under what conditions any lock-in fees  
10 are refundable to the borrower.<sup>25</sup>  
11

12 f. RCW 19.146.030(2)(f). A statement providing that moneys paid by the  
13 borrower to the mortgage broker for third-party provider services are held in a trust account and  
14 any moneys remaining after payment to third-party providers will be refunded. For purposes of  
15 this order, this disclosure is referred to as the Trust Funds Disclosure.  
16

17 g. RCW 19.146.030(3). If subsequent to the written disclosure being provided  
18 under this section, a mortgage broker enters into a lock-in agreement with a borrower or  
19 represents to the borrower that the borrower has entered into a lock-in agreement, then no less  
20 than three business days thereafter including Saturdays, the mortgage broker shall deliver or  
21 send by first-class mail to the borrower a written confirmation of the terms of the lock-in  
22 agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this  
23 section.  
24

25  
26 <sup>25</sup> Prior to 7/21/97, this cite held a requirement that the name of the lender and the relationship between the  
lender and the mortgage broker be disclosed.

1  
2 5. The timing for delivery of all of the state disclosures is covered as follows:

3 a. Prior to July 21, 1997, the time of delivery for the state disclosures is "Upon  
4 receipt of a loan application and before the receipt of any moneys from a borrower." In 1996,  
5 the Department rendered an interpretation that in situations where no moneys have been  
6 received from a borrower, the state disclosures may be made within three days of receipt of an  
7 application.<sup>26</sup> However, where funds have been received from a consumer, the disclosures must  
8 be made "before the receipt" of those funds.  
9

10 b. As of July 21, 1997, the time of delivery for the state disclosures is "Within  
11 three business days following receipt of a loan application or any moneys from a borrower."  
12

13 6. The Act requires that mortgage brokers comply with any requirement of the Truth in  
14 Lending Act, 15 U.S.C. sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, the Real Estate  
15 Settlement Procedures Act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, or the  
16 Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and  
17 201.12.  
18

19 7. For the purposes of its investigation and this order, the Department identifies the  
20 following "federal" disclosures of concern required under the laws and regulations listed above:

21 a. The Truth in Lending ("TIL") Disclosure.

22 b. The Good Faith Estimate ("GFE") Disclosure.  
23

24  
25 <sup>26</sup> Although this interpretation departs from the strict language of the statute, it is consistent with the timing  
26 requirements for federal disclosures. This interpretation also puts Nations' disclosure violations in a position more  
favorable to Nations than a strict interpretation of the statute and therefore is the guidance relied upon in the  
Department's investigation of loans originated prior to 7/21/97.

1  
2 c. The Controlled Business Arrangement ("CBA") or Affiliated Business  
3 Arrangement ("AfBA") Disclosure.<sup>27</sup>

4 8. The Department has found that Nations failed altogether to give the Rate Lock  
5 Disclosure form to consumers in at least 643 applications taken for loans covered under the Act  
6 between May 30, 1995 and January 1998, or the follow-up disclosures required by RCW  
7 19.146.030(2)(e) and (3).  
8

9 9. The Department has found that Nations failed to give the Trust Funds Disclosure  
10 form to consumers in at least 643 applications taken for loans covered under the Act between  
11 May 30, 1995 and January 1998. The Department has identified that only 23 of 77 consumer  
12 transactions contained this disclosure subsequent to October 1997.  
13

14 10. The Department has found that Nations failed to give the Third Party Provider  
15 Reports Disclosure for to consumers in at least 643 applications taken for loans covered under  
16 the Act between May 30, 1995 and January 1998. The Department has identified that only 23  
17 of 77 consumer transactions contained this disclosure subsequent to October 1997.  
18

19 E. FAILURE TO PROPERLY MAKE TRUTH IN LENDING AND GOOD FAITH  
20 ESTIMATE DISCLOSURES

21 Section Summary: *Truth in Lending (TIL) and Good Faith Estimate (GFE) disclosures*  
22 *are required to be made to borrowers under both state and federal law. These disclosures are*  
23 *intended to provide the borrower with accurate information from which they can make a*  
24

25 <sup>27</sup> AfBA (previously CBA) under Regulation X, Real Estate Settlement Procedures Act (12 CFR part 3500.15),  
26 is discussed in detail under section IV.F. of this order. A 1997 rule change to Regulation X changed the name of

1  
2 *determination to continue with the loan offered. Failure to make the required disclosures is*  
3 *harmful to consumers. This section identifies Nations' practice of failing to properly make TIL*  
4 *and GFE disclosures. Although Nations was ordered by the Superior Court Stay to make these*  
5 *disclosures, the violations continued through the end of 1997. The Department believes that an*  
6 *investigation of this issue in 1998 would show that Nations' continues to fail to properly make*  
7 *these disclosures.*

8  
9       1. As discussed previously in this section, the TIL Disclosure and GFE Disclosure are  
10 required to be provided to the borrower within specific time periods as detailed under section  
11 II.D. of this order. The triggering of the time periods under state law follows receipt of an  
12 application or receipt of moneys from a borrower. Nations appears to have intentionally made  
13 it difficult to determine the point of receipt of an application in order to confuse the triggering  
14 point for disclosure as discussed below.  
15

16       2. The Department has found that the majority of applications completed by Nations for  
17 borrowers have been marked as received by mail whether the application was received by mail  
18 or not.  
19

20       3. In the majority of loan originations with Washington consumers, the Department has  
21 determined that Nations contacted the consumer by telephone and obtained certain information  
22 to be completed in the Federal National Mortgage Association ("FNMA") application form.  
23 Subsequent to this telephone solicitation, a Nations employee meets with the consumer to  
24 complete and/or obtain a signature on the FNMA application form. The Department has  
25

26  
the CBA disclosure to AfBA.

1  
2 determined from consumers that in most cases Willis or Johnson were the Nations employees  
3 and that the meetings were generally conducted at the consumers' residences. At the point of  
4 this meeting, Nations, via its employee, is in receipt of the application from the borrower, and  
5 the timing for disclosures has been triggered.  
6

7 4. Following the meeting with the consumer the Nations employee delivers the  
8 application package to Nations' California office. The California office then produces a TIL  
9 Disclosure and a GFE Disclosure, however, in many cases the Department has found that the  
10 disclosures were not provided to the borrower, but simply placed in the file making it appear to  
11 the regulators that the disclosures were provided.  
12

13 5. A second meeting is held at the consumer's residence (again, usually by Willis or  
14 Johnson). During this meeting the Nations employee obtains the borrower's signature on loan  
15 closing documents and disclosures that may or may not have been provided to the borrower  
16 previously.  
17

18 6. The Department has found that Nations' pattern or practice is to not provide the  
19 borrower with the TIL and GFE Disclosures until the time of signing (generally 30 or more  
20 days after the date the disclosures are due). The Department bases this finding on:

21 a. Statements by Willis and Johnson that they were unfamiliar with the time  
22 period required for provision of disclosures.  
23

24 b. A review of 371 loan files, the majority of which contain no disclosures  
25 signed and dated by the borrower within the required time period. The Department found that a  
26

1  
2 large percentage, likely constituting a majority of the loan files, contained signatures  
3 commensurate with the date of signing of closing papers.

4 c. An investigation of complaints filed by consumers against Nations.

5 d. Interviews with consumers claiming that they had either not received  
6 disclosures at all, or the disclosures were received well after the required date of provision by  
7 Nations.  
8

9 e. Written responses by consumers to the Department's questionnaire (out of  
10 135 responses from consumers, only 48 stated that they received the TIL Disclosure within  
11 three days of application, and only 46 consumers stated that they received the GFE Disclosure  
12 within three days of application).  
13

14 7. The Department's investigation shows that Nations has a pattern or practice of  
15 failing to provide consumers with disclosures as required pursuant to RCW 19.146.030 and  
16 RCW 19.146.0201(10). Such practice was alleged in the Department's Temporary Order to  
17 Cease and Desist. In the September 18, 1997, Superior Court Stay, Nations was specifically  
18 restrained from "Failing to make timely disclosure of lending information regarding loan or  
19 brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in lending  
20 disclosure statements." However, the Department found that, after this date, Nations continued to  
21 violate both the state and federal disclosure requirements, and therefore operated in violation of  
22 the Superior Court Stay, as well.  
23

24 8. In support of its findings, the Department offers the following example consumer  
25 transactions subsequent to the Stay:  
26



1  
2 a. [REDACTED] The borrowers' loan application was received by Nations on  
3 September 30, 1997. On or before October 3, 1997, Nations was to have provided to the  
4 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL,  
5 GFE and AfBA disclosures. Although the file delivered to the Department contained unsigned  
6 TIL and GFE disclosures dated October 13, 1997, the [REDACTED] informed the Department  
7 that they did not receive these disclosures until November 25, 1997, in an envelope postmarked  
8 November 24, 1997. The [REDACTED] did not receive an AfBA disclosure or disclosures as  
9 required pursuant to RCW 19.146.030(2)(c), (d), (e) and (f).  
10

11 b. [REDACTED] The borrower's loan application was received by Nations on October  
12 30, 1997. On or before November 3, 1997, Nations was to have provided to [REDACTED] all  
13 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
14 disclosures. The file delivered to the Department contained no disclosures as required pursuant to  
15 RCW 19.146.030(2) or federal law. On December 9, 1997, [REDACTED] reported to the Department  
16 that he had received no disclosures.  
17

18 c. [REDACTED]. The borrowers' loan application was received by  
19 Nations on November 17, 1997. On or before November 20, 1997, Nations was to have provided  
20 to the [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE  
21 and AfBA disclosures. The file delivered to the Department contained no disclosures as required  
22 pursuant to RCW 19.146.030(2) or federal law. On December 9, 1997, the [REDACTED] reported to the  
23 Department that they had received no disclosures.  
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2 d. [REDACTED] The borrowers' loan application was received by Nations on October  
3 14, 1997. On or before October 17, 1997, Nations was to have provided to the [REDACTED] all  
4 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
5 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
6 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
7 disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.  
8

9 e. [REDACTED] The borrowers' loan application was accepted by Nations on October  
10 24, 1997. On or before October 28, 1997, Nations was to have provided to the [REDACTED] all  
11 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
12 disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure  
13 was provided to the borrower was October 31, 1997. There is also evidence in the file that the  
14 earliest date an AfBA disclosure was provided to the borrower was December 12, 1997.  
15 Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)  
16 were provided to the borrower.  
17  
18

19 f. [REDACTED] The borrowers' loan application was accepted by Nations on  
20 November 5, 1997. On or before November 8, 1997, Nations was to have provided to the  
21 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
22 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
23 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
24 disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.  
25  
26

1  
2 g. [REDACTED] The borrowers' loan application was accepted by Nations on  
3 November 7, 1997. On or before November 13, 1997, Nations was to have provided to the  
4 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
5 AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE  
6 disclosure was provided to the borrower was November 17, 1997. There is no evidence in the file  
7 that an AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the  
8 file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.  
9

10 h. [REDACTED] The borrowers' loan application was accepted by Nations on  
11 November 10, 1997. On or before November 14, 1997, Nations was to have provided to the  
12 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE  
13 and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE  
14 disclosure was provided to the borrower was November 17, 1997. There is no evidence in the file  
15 that an AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the  
16 file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.  
17  
18

19 i. [REDACTED] The borrowers' loan application was accepted by Nations on November  
20 12, 1997. On or before November 15, 1997, Nations was to have provided to the [REDACTED] all  
21 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
22 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
23 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
24 disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.  
25  
26

1  
2 j. [REDACTED] The borrowers' loan application was accepted by Nations on  
3 November 20, 1997. On or before November 24, 1997, Nations was to have provided to the  
4 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
5 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
6 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
7 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.  
8

9 k. [REDACTED] The borrowers' loan application was accepted by Nations on October  
10 15, 1997. On or before October 18, 1997, Nations was to have provided to the [REDACTED] all  
11 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
12 disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure  
13 was provided to the borrower was November 4, 1997. There is also evidence in the file that the  
14 earliest an AfBA disclosure was provided to the borrower was December 3, 1997. Additionally,  
15 there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided  
16 to the borrower.  
17  
18

19 l. [REDACTED] The borrowers' loan application was accepted by Nations on  
20 November 24, 1997. On or before November 28, 1997, Nations was to have provided to the  
21 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
22 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
23 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
24 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.  
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m. [REDACTED] The borrowers' loan application was accepted by Nations on November 25, 1997. On or before November 29, 1997, Nations was to have provided to the [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

n. [REDACTED] The borrowers' loan application was accepted by Nations on November 26, 1997. On or before December 1, 1997, Nations was to have provided to the [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

o. [REDACTED]. The borrowers' loan application was accepted by Nations on December 2, 1997. On or before December 5, 1997, Nations was to have provided to the [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

p. [REDACTED] The borrowers' loan application was accepted by Nations on December 2, 1997. On or before December 5, 1997, Nations was to have provided to the [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA

1  
2 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
3 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
4 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

5  
6 q. [REDACTED] The borrowers' loan application was accepted by Nations on  
7 December 4, 1997. On or before December 8, 1997, Nations was to have provided to the [REDACTED]  
8 all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
9 disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure  
10 was provided to the borrower was December 11, 1997. There is no evidence in the file that an  
11 AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the file that  
12 the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

13  
14 r. [REDACTED] The borrowers' loan application was accepted by Nations on December  
15 4, 1997. On or before December 8, 1997, Nations was to have provided to the [REDACTED] all  
16 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
17 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
18 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
19 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

20  
21 s. [REDACTED]. The borrowers' loan application was accepted by Nations on December  
22 9, 1997. On or before December 12, 1997, Nations was to have provided to the [REDACTED] all  
23 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
24 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
25 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
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1  
2 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
3 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

4 t. [REDACTED] The borrowers' loan application was accepted by Nations on December  
5 9, 1997. On or before December 12, 1997, Nations was to have provided to the [REDACTED] all  
6 disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA  
7 disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
8 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
9 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

10 u. [REDACTED] The borrowers' loan application was accepted by Nations on  
11 December 9, 1997. On or before December 12, 1997, Nations was to have provided to the  
12 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
13 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
14 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
15 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

16 v. [REDACTED] The borrowers' loan application was accepted by Nations on  
17 December 12, 1997. On or before December 16, 1997, Nations was to have provided to the  
18 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE  
19 and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or  
20 AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that  
21 the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

1  
2 w. [REDACTED] The borrowers' loan application was accepted by Nations on  
3 December 15, 1997. On or before December 18, 1997, Nations was to have provided to the  
4 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
5 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
6 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
7 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.  
8

9 x. [REDACTED] The borrowers' loan application was accepted by Nations on  
10 December 15, 1997. On or before December 18, 1997, Nations was to have provided to the  
11 [REDACTED] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and  
12 AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA  
13 disclosure were provided to the borrower. Additionally, there is no evidence in the file that the  
14 disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.  
15

16 9. The purpose of the disclosure requirements under both state and federal law are to  
17 ensure that the borrower has been provided with specific information pertaining to their  
18 transaction well prior to making a commitment to the mortgage broker to accept the loan that is  
19 being offered. Nations' practice of delaying or failing altogether to provide borrowers with the  
20 statutorily required information is a scheme, artifice or device which the Department believes is  
21 used by Nations to defraud or mislead borrowers into committing to loans they might not  
22 otherwise be inclined to accept had they received full and timely disclosure.  
23

24 10. More specifically, when Nations solicits mortgage business from consumers, but fails  
25 until the date of signing closing papers, or shortly before the date of signing closing papers, to  
26



1  
2 provide the borrower with disclosures, and the borrower does not obtain a loan under the terms  
3 they believed they would obtain, Nations has committed a practice of bait and switch.

4  
5 11. It is important to note that the Department received 139 responses by consumers to  
6 the Department's questionnaire stating that they had been surprised by either the costs, rate or  
7 terms of the loan they had received from Nations. Further, 82 responding consumers informed the  
8 Department that the loan had not turned out as they had expected or were promised. While the  
9 Department does not rely solely on the consumer responses to the questionnaire in making its  
10 findings of bait and switch practices by Nations, the Department has added the responses to its  
11 document inspection to add weight to the finding that Nations has committed bait and switch with  
12 Washington consumers.  
13

#### 14 F. AFFILIATED BUSINESS ARRANGEMENTS AND CONSUMER HARM

15 Section Summary: *The Department has identified that Nations has relationship with*  
16 *Riverview Escrow Company, Inc. Under federal law, such relationships must be disclosed to*  
17 *consumers in advance of any referral of business to the affiliate, along with the cost to be*  
18 *assessed the consumer. This disclosure further informs the consumer that they are not required to*  
19 *use the services of the affiliate. The intent of the disclosure requirement is to prevent the*  
20 *consumer from suffering harm through the control of this business arrangement. The Department*  
21 *has found that Nations does not properly disclose its affiliated business arrangements, or provide*  
22 *the borrower with advance notice that they are not required to use the affiliate's services. The*  
23 *Department has also found that Nations assesses higher than normal market costs to the*  
24 *consumer for the services of the affiliate. Further, the Department believes that Nations' failure*  
25  
26

1  
2 *to properly disclose this relationship is part of its scheme to defraud consumers by keeping the*  
3 *consumer's transaction from being scrutinized by an independent escrow company.*

4  
5 1. Pursuant to §3500.15 of Regulation X and section 3(7) of the Real Estate Settlement  
6 Procedures Act, 12 USC 2602(7) ("RESPA") an affiliated business arrangement means "an  
7 arrangement in which (A) a person who is in a position to refer business incident to or a part of a  
8 real estate settlement service involving a federally related mortgage loan, or an associate of such  
9 person, has either an affiliate relationship with or a direct or beneficial ownership interest of more  
10 than 1 percent in a provider of settlement services; and (B) either of such persons directly or  
11 indirectly refers such business to that provider or affirmatively influences the selection of that  
12 provider."

13  
14 2. Pursuant to §3500.15(b) of Regulation X, an affiliated business arrangement is not a  
15 violation of section 8 of RESPA (12 USC 2607) and of Sec. 3500.14 if the conditions set forth in  
16 this section are satisfied:

17  
18 (1) The person making each referral has provided to each person whose  
19 business is referred a written disclosure, in the format of the Affiliated Business Arrangement  
20 Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship  
21 (explaining the ownership and financial interest) between the provider of settlement services (or  
22 business incident thereto) and the person making the referral and of an estimated charge or range  
23 of charges generally made by such provider (which describes the charge using the same  
24 terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures  
25  
26

1  
2 must be provided on a separate piece of paper no later than the time of each referral or, if the  
3 lender requires use of a particular provider, the time of loan application, except that:

4 (i) Where a lender makes the referral to a borrower, the condition  
5 contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith  
6 estimate or a statement under Sec. 3500.7(d) is provided.  
7

8 3. As covered in section II.A. of this order, Jamie Chisick is the owner of Riverview, an  
9 escrow company known to provide settlement services on loans originated by Nations. By Jamie  
10 Chisick's own writings to the Department (letter dated March 18, 1997), an Affiliated Business  
11 Arrangement exists between Nations and Riverview.  
12

13 4. In 371 Nations files where the consumer closed the transaction or which were pending  
14 closure, the Department identified that Riverview was listed as the escrow company and was paid  
15 a fee on the HUD1 settlement statement as the escrow company. These files constitute all of the  
16 transactions that Nations presented to the Department as closed or pending closure for  
17 Washington consumers.  
18

19 5. The Department believes, based on the fact that Nations refers Riverview to all or  
20 nearly all of its consumers, that it is aware that such referral will be made before the consumer is  
21 solicited. Therefore, Nations is required to make the AfBA or CBA disclosure to consumers upon  
22 origination of the loan application or at the very least, at the time of required delivery of the Good  
23 Faith Estimate.  
24

25 6. In all files reviewed, the Department was unable to identify a single occurrence where  
26 Nations had made the AfBA or CBA disclosure within the time frame required.

1  
2 7. In most cases, the Department determined that the AfBA or CBA disclosure was made  
3 subsequent to Riverview preparing escrow instructions and performing other advance work on the  
4 borrower's transaction.  
5

6 8. In most cases, the Department also determined that Nations made the AfBA or CBA  
7 disclosure at the time of signing of the loan closing documents; weeks after the required date of  
8 disclosure.  
9

10 9. In some cases, the Department was unable to find the CBA or AfBA disclosure in the  
11 borrower's loan file, thus determining that disclosure had never been made.  
12

13 10. As an example of this failure to properly disclose, the Department provides the  
14 following borrower transactions and information:  
15

16 a. [REDACTED] Loan application received June 26, 1997. Escrow Order Form from  
17 Nations to Riverview dated August 5, 1997. CBA disclosure not provided.  
18

19 b. [REDACTED] Loan application received July 13, 1997. Escrow instructions  
20 provided by Riverview July 22, 1997. CBA disclosure not provided.  
21

22 c. [REDACTED] Loan application received July 24, 1997. Escrow instructions  
23 provided by Riverview August 14, 1997. CBA disclosure provided to Castillo October 27, 1997.  
24 Date of signing October 27, 1997.  
25

26 d. [REDACTED] Loan application received July 31, 1997. Escrow Order Form from  
Nations to Riverview dated August 19, 1997. CBA disclosure not provided.  
27

28 e. [REDACTED] Loan application received August 14, 1997. Escrow Order Form  
from Nations to Riverview dated August 22, 1997. CBA disclosure not provided.  
29

1  
2 f. [REDACTED] Loan application received August 14, 1997. Escrow Order Form  
3 from Nations to Riverview dated August 25, 1997. CBA disclosure not provided.

4 g. [REDACTED] Loan application received August 14, 1997. Escrow Order Form  
5 from Nations to Riverview dated September 9, 1997. CBA disclosure not provided.  
6

7 h. [REDACTED] Loan application received September 25, 1997. Escrow instructions  
8 provided by Riverview October 24, 1997. CBA disclosure provided to [REDACTED] November 20,  
9 1997. Date of signing November 20, 1997.

10 i. [REDACTED] Loan application received September 30, 1997. Escrow Order  
11 Form from Nations to Riverview dated October 30, 1997. CBA disclosure not provided.  
12

13 j. [REDACTED] Loan application received October 8, 1997. Escrow instructions  
14 provided by Riverview October 24, 1997. CBA disclosure provided to [REDACTED] November 20,  
15 1997. Date of signing November 20, 1997.

16 11. The import of the AfBA disclosure is clear. The borrower is at a distinct disadvantage  
17 when required services are under the control of the same entity. Federal regulations have been  
18 imposed to provide the borrower with advance warning that:  
19

- 20 a. A controlling interest exists;  
21 b. The cost of using the referred service; and  
22 c. The borrower is not required to use the controlled service, and that they may  
23 find the same service at lower cost through another provider.  
24

25 12. The Department has identified in section II.B. of this report that on average, the cost  
26 to a borrower of closing with Riverview is approximately \$350 higher than closing with a

1  
2 Washington licensed escrow agent. When Nations fails to notify the borrower of their rights or  
3 fails to make notification within the required time frames, Nations has presented the borrower  
4 with the following unbargained for risks:

- 5 a. Greater cost to the consumer;  
6  
7 b. The consumer's transaction is being closed by an escrow agent that by virtue of  
8 ownership holds Nations' interests above those of the borrower; and  
9  
10 c. The consumer's transaction is closed by an unlicensed, unbonded, unregulated  
11 escrow agent in the State of Washington.

12 13. The Department considers all of the above risks unacceptable and believes that  
13 Nations makes referrals to Riverview, without proper notification to the consumer, for the  
14 following reasons:

- 15 a. Jamie Chisick stands to increase the profitability to his companies at the cost of  
16 the consumer; and  
17  
18 b. An unbiased Washington escrow agent is likely to make the borrower aware of  
19 many of the violations that have been noted in this order, thereby seriously restricting Nations'  
20 ability to deceive and defraud the consumer.

21 G. PREPAYMENT PENALTY AND CONSUMER HARM

22 Section Summary: *Prepayment penalties are charges assessed to the consumer when a*  
23 *loan is paid off within a specified period of time (usually five years). The intent of the penalty is*  
24 *for the lender to recoup some of the expected interest income it has lost upon prepayment of the*  
25 *loan. Mortgage brokers, such as Nations, delivering loans with prepayment penalties to lenders*  
26

1  
2 *derive greater compensation than when loans are delivered without prepayment penalties. In and*  
3 *of itself, the prepayment penalty is not an unlawful charge. However, this section discusses*  
4 *Nations' practice of deceiving consumers about the existence of the prepayment penalty which is*  
5 *a violation of law.*

6  
7 1. The Department has found that approximately 79% of the loans originated and closed  
8 by Nations were adjustable rate mortgages ("ARMs"). The Department has further found that all,  
9 or nearly all, of these loans contained prepayment penalties to be charged to the borrower by the  
10 lender in the event that the loan balance is substantially reduced or refinanced within the first few  
11 years of the loan.

12  
13 2. Although the prepayment penalty language and calculation may vary from loan to loan,  
14 the Department has identified the following prepayment penalty clause in the ARM note to be  
15 consistent and representative of the penalty incurred by the borrower:

16 "If within five (5) years from the date of execution of the Security Instrument (as defined  
17 below) I make a full prepayment or partial prepayment(s), I will at the same time pay to the Note  
18 Holder a prepayment charge. The prepayment charge will be equal to six months' advance  
19 interest on the amount of the prepayment that, when added to all other amounts prepaid during the  
20 twelve (12) month period immediately preceding the date of the prepayment, exceeds twenty  
21 percent (20%) of the original principal amount of this note."

22  
23 3. The Department does not find that the existence of a prepayment penalty is a violation  
24 of law or regulation. However, it is the apparent attempts to hide or misrepresent the prepayment  
25 penalty that constitute an act of violation and injurious practice towards consumers.  
26

1  
2 4. The Department supports its finding that Nations attempts to hide prepayment penalty  
3 information from the borrower by the borrowers' own statements. Twenty-two consumers have  
4 informed the Department in writing that they were not aware that they had a prepayment penalty  
5 on their loan. Several borrowers informed the Department that Nations had specifically told them  
6 they would not have a prepayment penalty on their loan, yet a prepayment penalty existed.  
7

8 It is also important to note that many consumers were told by Nations that they would be  
9 able to convert or refinance out of the ARM loan they received within one year. However, the  
10 prepayment penalty that would be applied to many of these loans would make the cost of a  
11 refinance prohibitive. Had the borrowers been fully informed that such a prepayment would be  
12 incurred in the event they attempted to convert or refinance the ARM, the borrowers would have  
13 been less likely to accept the ARM. Several borrowers have supported the Department's belief in  
14 this. An example of what some borrower's have written to the Department follows:  
15

16 a. [REDACTED] They were unaware that their loan contained a  
17 prepayment penalty and stated, "When we have a chance without paying the huge penalty we will  
18 go elsewhere."  
19

20 b. [REDACTED] They were unaware that their loan contained a  
21 prepayment penalty and stated, "We were also told that there would be no prepayment penalties  
22 applicable to the loan . . . We now want to refinance to a obtain a lower rate, and our prepayment  
23 penalty will be about \$7,800."  
24

25 c. [REDACTED] They believed that their prepayment penalty had  
26 been omitted and stated, "We called Tanya when prepayment penalty was omitted - she said she



1  
2 would look into it at home office – many phone calls, nothing. We were told soon after signing  
3 that our contract had been sold and that 'we signed contract' and 'too bad.' No flex! No  
4 negotiation!"

5 d. [REDACTED] He was unaware that his loan contained a prepayment penalty  
6 and stated, "When I got our loan refinanced with another company I had to pay a \$6,000.00  
7 prepayment penalty. I was under the impression this would not happen if we kept the loan for 12  
8 months."  
9

10 e. [REDACTED] They were unaware that their loan contained a  
11 prepayment penalty and stated, "We were lead to believe it was going to have a cap on interest  
12 and early payoff was okay. We feel we were mislead."  
13

14 f. [REDACTED]: They were unaware that their loan contained a  
15 prepayment penalty. Because their payments were too high on the loan they obtained through  
16 Nations, they decided to sell their home. They stated, "This experience has cost us \$25,000 . . .  
17 \$5,200 prepayment penalty which we were not aware of until we sold our home."  
18

19 5. It can only be assumed by the Department that the benefit of this sales tactic has not  
20 been lost on Nations and that the practice of "hiding" the prepayment penalty or diverting the  
21 borrower's attention from the prepayment penalty is intentional and routine.

22 6. The Department supports its finding that Nations misrepresents the prepayment penalty  
23 to the borrower by Nations' own instruction manual. As shown in section IV.C.20 of this order,  
24 the Doc Signer Manual instructs the Nations employee to lie about the prepayment penalty by  
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stating that "every real estate loan" has a prepayment penalty and that the amount of penalty is established "according to the law."

In a section of the Doc Signer Manual identified as COMMON OBJECTIONS, the Nations employee is instructed by script to handle the consumer's concerns of a prepayment penalty as follows:

Borrower: "I told my loan officer I didn't want any prepayment penalty. What is this?"

Doc Signer: "Oh, really? Why didn't you want that?"

Borrower: "Well, I just don't want to have to pay more money to pay off my loan."

Doc Signer: "Oh, well sir, I can assure you that it does not work that way. According to your loan, you are allowed to pay up to 20% of the original loan amount every year for the first five years. **(NOW CALCULATE WHAT 20% more payment would add per month to borrower's payment. Calculate Loan Amount X 80% divided by 12. This shows you the maximum payment allowed per month.)** Then say: Sir, as you can see you can pay up to (State Amount) each month without a penalty. Can you afford to pay this every month?"

Borrower: "Not really."

Doc Signer: "Exactly, so this really isn't an issue. That's the way this works. If you understand this please approve this paper right here."

7. There are two deceptions played on the borrower in the script instructed above:

1  
2 a. The borrower's concern of prepayment by paying off the loan, is simply  
3 diverted to a discussion of partial payments on the loan. The answer still remains that the  
4 borrower will pay six months of interest on the payoff amount of the loan.  
5

6 b. The prepayment penalty calculation is actually to be based on 20% of the loan  
7 amount not 80%. Based on the script, a loan amount of \$100,000 would allow the borrower to  
8 make up to \$6,667 per month in additional payment without a penalty. The true amount, based on  
9 the actual calculation of the prepayment penalty carried in the note, is \$1,667 per month. This is a  
10 misrepresentation of \$5,000 per month. In either case, however, the borrower's real concern is  
11 whether they will have a penalty if the loan is paid off through refinance or the home sold. The  
12 easy answer is avoided by the Nations employee.  
13

14 8. The script goes on to handle a borrower's more direct objection to the prepayment  
15 penalty:  
16

17 Borrower: "I want to sell my house in two years, I don't want a pre-pay!"

18 Doc Signer: "That's no problem at all. The pre-payment privilege can be negotiated  
19 after the first year. Even better, they might help find financing for the buyer of your home and if  
20 they do that they may not want to charge you a pre-pay at all."

21 Such statements are clearly false and misleading. Nations sells 100% of its loans into the  
22 secondary market. The borrower's mortgage loan is likely to have been sold several more times  
23 prior to the five year prepayment penalty period. Each new note holder has purchased the loan for  
24 a value based on the inclusion of the prepayment penalty. The note holder is neither required,  
25  
26

1  
2 nor would they desire, to give up six months' worth of expected interest upon payoff. This is  
3 supported by the [REDACTED] experience cited above.

4 Further, the statement that the note holder "might help find financing for the buyer" is  
5 untrue. There is no certainty that the eventual note holder will even be a financial institution in  
6 the business of making loans to consumers. Even if the holder is a maker of real estate loans, it is  
7 not certain that the holder will be licensed to conduct business in Washington. Finally, the chance  
8 that a prospective purchaser of the home may knowingly transact business with the holder of the  
9 note is so remote to make the concept inconceivable.  
10

11  
12 9. The Department's findings in this section are that Nations routinely hides the existence  
13 of a prepayment penalty from consumers, or provides the consumer with misrepresentations about  
14 the prepayment penalty, in order to deceive the borrower into accepting a loan that they might  
15 otherwise not accept.

16  
17 10. To understand what might be Nations' and its employees motives in creating such a  
18 deception, the Department contacted other mortgage brokers working with lenders similar to those  
19 used by Nations that have prepayment penalties on their loans. One such mortgage broker  
20 provided the Department with a copy of the Bank of Yorba Linda program guide produced for  
21 mortgage brokers in Washington.<sup>28</sup> The guide states that in order to "buydown" or waive the  
22 prepayment penalty, .50% must be added to the rate, .25% to the adjustable rate index margin and  
23 1.00% to the cost of the loan. The mortgage broker providing this to the Department stated that it  
24

25  
26 <sup>28</sup> The Bank of Yorba Linda is a lender routinely used by Nations.

1  
2 would generally be the mortgage broker absorbing the 1.00% cost out of their expected earnings  
3 in the transaction.

4  
5 11. The Department has found that in transactions where the borrower has insisted on no  
6 prepayment penalty, the Nations loan officer is charged directly for the waiver. Noting this, the  
7 incentive for the loan officer to hide the existence of a prepayment penalty is clear.

8 H. DECEPTION IN THE "ESTIMATED COST ANALYSIS"

9 Section Summary: *The Estimated Cost Analysis is a disclosure form created by Nations*  
10 *to confuse borrowers about how adjustable rate mortgages work. The analysis claims to provide*  
11 *borrowers with information of the amount of savings they may realize with a Nations originated*  
12 *mortgage. The Estimated Cost Analysis is designed as a tool of deception to convince borrowers*  
13 *to accept a loan they might otherwise not accept had they been provided with accurate*  
14 *information or no Estimated Cost Analysis at all. This section discusses the Estimated Cost*  
15 *Analysis as a scheme, device or artifice to defraud or mislead borrowers.*

16  
17 1. On September 24, 1997, Willis was shown a copy of a form identified as  
18 NATIONSCAPITAL MORTGAGE CORP. Estimated Cost Analysis ("ECA"), received by the  
19 Department from Salick. Willis explained that the ECA was to be completed during what  
20 Nations' calls the "Monster Disclosure." The apparent intent of the Monster Disclosure and the  
21 ECA is to show borrowers the amount of interest cost that can be saved over the life of the loan by  
22 paying additional monthly amounts toward principal. The Department believes that Nations'  
23 purpose in providing the consumer with the ECA is to reduce the "sticker shock" of the loan being  
24 offered.  
25  
26

1  
2 2. A copy of the ECA is attached as Exhibit C to this order. The ECA is divided into two  
3 sections; top and bottom. The top section is intended to provide the borrower with information  
4 concerning the loan they are currently signing. The bottom section, identified as Mortgage  
5 Savings Plan, is apparently intended to show the consumer a method for reducing the cost and  
6 term to maturity of the loan analyzed in the top section.  
7

8 3. The top section of the ECA transfers specific information from the Truth in Lending  
9 Disclosure Statement into boxes on the ECA. The transferred information is the amount financed,  
10 finance charge, total of payments, the initial monthly payment to be incurred in the loan, and the  
11 term to maturity. The amount financed, finance charge and total of payments are asterisked on the  
12 ECA as "For illustration purposes only."  
13

14 4. The bottom section (Mortgage Savings Plan), shows the following information:

- 15 a. The initial monthly "Payment" to be incurred on the new loan;  
16 b. An "Extra" amount to be applied monthly to reduce the principal;  
17 c. The "New Payment" equal to the Payment plus the Extra;  
18 d. The "Old Total Pay" taken from the total of payments in the top section;  
19 e. The "Shorter Term" to maturity to be achieved by the New Payment;  
20 f. The "New Total Pay" showing the expected amount of total payments over the  
21 life of the loan with the New Payment applied; and  
22  
23 g. The "Savings in Finance Charge" which is the difference between the New  
24 Total Pay and the Old Total Pay.  
25  
26

1  
2 A final area of the Mortgage Savings Plan section is reserved for showing the borrower  
3 how much money they could accrue in the bank if they followed the plan. This area, however, is  
4 generally not completed by Nations.

5  
6 5. The Mortgage Savings Plan section of the ECA reflects the New Payment in an  
7 amount, that if applied to a fixed rate mortgage, will amortize the principal balance to zero in  
8 fifteen years. For example: A \$100,000, 30 year fixed rate loan made at an 8% rate of interest  
9 would show a \$733.76 Payment, with \$222 Extra paid toward principal each month, for a New  
10 Payment of \$955.76, resulting in a Shorter Term of fifteen years.

11  
12 6. When applied to a fixed rate mortgage, the ECA appears to provide accurate  
13 information to the consumer. In other words, the Department found that the Mortgage Savings  
14 Plan "works" for a fixed rate mortgage. The reason the Mortgage Savings Plan is accurate for a  
15 fixed rate mortgage is that additional principal payments on a fixed rate mortgage are calculated to  
16 reduce the principal balance and term to maturity on the loan while leaving the monthly payment  
17 amount "fixed."

18  
19 7. When applied to an adjustable rate mortgage, however, the ECA provides two  
20 substantial inaccuracies:

- 21 a. The term to maturity does not reduce as described; and  
22 b. The expected Savings in Finance Charge shown on the ECA is vastly  
23 overstated.

24  
25 8. Additional principal payments applied to an adjustable rate mortgage are not calculated  
26 to reduce the term to maturity. In other words, the contractual term to maturity in an adjustable

1  
2 rate loan calculation does not change. The reason for this is that the amortization calculation  
3 holds the term to maturity constant while reducing the principal balance and all things being  
4 equal, the monthly payment. This phenomenon is the result of a more complex series of iterations  
5 in the calculation on the adjustable rate loan than the fixed rate loan.  
6

7 The amortization schedule calculation on the adjustable rate mortgage must factor the  
8 contractual monthly payment in a given year, based on the remaining principal balance, at the  
9 current indexed (adjusted) rate, recast over the remaining term to maturity at each adjustment  
10 period. For adjustable rate loans originated by Nations, this calculation would generally occur  
11 every six months throughout the 30 year life of the loan.  
12

13 The amortization schedule for "additional" principal reductions on the adjustable rate  
14 mortgage is calculated exactly the same, except that the principal balance will be further reduced  
15 by the amount of the extra payments in each period.  
16

17 9. As discussed in section IV.A.14. of this order, an ECA is to be completed for every  
18 borrower. The Department has determined that regardless of the loan program offered to the  
19 consumer (fixed or adjustable), the same ECA format and calculations are used with every  
20 consumer. When completing the ECA on adjustable rate mortgages, Nations does not apply the  
21 true amortization schedule calculation. The result is a grossly inaccurate representation to the  
22 borrower.  
23

24 10. During its investigation, the Department randomly sampled 255 loans originated by  
25 Nations to determine what percentage of loans originated by Nations were ARMs. The analysis  
26 showed that 201 loans, or 79% of the sample were adjustable rate mortgages. This statistic leads



1  
2 the Department to determine that nearly 80% of consumers obtaining loans from Nations have  
3 been misinformed.

4 11. The misinformation provided by Nations is that consumers are able to apply  
5 additional amounts to their monthly payments and achieve two substantially positive effects:  
6

7 a. A mortgage that amortizes to zero in fifteen years; and

8 b. A significant reduction in cost to be realized through interest savings over the  
9 life of the loan.

10 12. While the Department does acknowledge that interest savings can accrue to a  
11 borrower by making additional principal payments on an adjustable rate mortgage, it is deceptive  
12 to represent the amount of interest deduction shown on the ECA and it is false to indicate that a  
13 fifteen year term to maturity is a likely outcome.  
14

15 It should be noted that the concept of interest savings is true on any loan, and has no  
16 bearing on the cost of the loan or whether the loan is beneficial to the borrower. To sell the loan  
17 based on such an analysis is deception.  
18

19 13. The Department has reanalyzed four consumer transactions to accurately reflect the  
20 result of Nations' proposed Extra payments, and compares the accurate calculation with that  
21 shown to the consumer on the ECA<sup>29</sup>:  
22

---

23 <sup>29</sup> The Department has referred to the lender's payment stream calculation shown on the Truth in Lending  
24 Disclosure Statement in determining the adjustment periods and interest rate at each adjustment period. Note that  
25 in using the lender's disclosure to determine the payment periods and interest rate at each adjustment period, the  
26 Department has chosen a more conservative (favorable to Nations) analysis than had it used the terms from the  
Adjustable Rate Note. The reason for the disclosure's more favorable representation is that the Truth in Lending  
Disclosure Statement allows the payment stream to be reflected as "level" when the adjustments reach the fully  
indexed rate (index plus margin), rather than continuing to rise to the point of lifetime rate cap. Had the

1  
2 a. [REDACTED] This adjustable rate mortgage shows an initial rate of 8.5%, adjustable  
3 every six months with a maximum movement in rate of 1.5% from the previous adjustment  
4 period. The initial payment is \$934. Nations has recommended on the ECA that [REDACTED] pay an  
5 additional \$254 per month in principal for a New Payment of \$1,188. The Savings in Finance  
6 Charge shown to [REDACTED] is \$223,589. The accurate calculation shows a savings of only \$6,330, a  
7 misrepresentation to the consumer of \$217,259, and a payoff 15 years too early.  
8

9 b. [REDACTED]. This adjustable rate mortgage shows an initial rate of 7.19%, adjustable  
10 every six months with a maximum movement in rate of 1.5% from the previous adjustment  
11 period. The initial payment is \$501. Nations has recommended on the ECA that [REDACTED] pay an  
12 additional \$172 per month in principal for a New Payment of \$673. The Savings in Finance  
13 Charge shown to [REDACTED] is \$149,819. The accurate calculation shows a savings of only \$4,896, a  
14 misrepresentation to the consumer of \$144,923, and a payoff 15 years too early.  
15

16 c. [REDACTED] This adjustable rate mortgage shows an initial rate of 7.75%,  
17 adjustable every six months with a maximum movement in rate of 1% from the previous  
18 adjustment period. The initial payment is \$716. Nations has recommended on the ECA that  
19 [REDACTED] pay an additional \$225 per month in principal for a New Payment of \$941. The Savings  
20 in Finance Charge shown to [REDACTED] is \$183,080. The accurate calculation shows a savings of  
21 only \$105,024, a misrepresentation to the consumer of \$78,056, and a payoff 15 years too early.  
22  
23  
24  
25

26 Department performed its analysis based on potential rate increases rather than the lender's disclosure, the results would have shown an even greater degree of misrepresentation by Nations.

1  
2 d. [REDACTED] This adjustable rate mortgage shows an initial rate of 7.75%  
3 adjustable every six months, however, the first adjustment period, which does not begin for two  
4 years, is fully indexed at the first adjustment. The initial payment is \$659. Nations has  
5 recommended on the ECA that [REDACTED] pay an additional \$200 per month in principal for a New  
6 Payment of \$859. The Savings in Finance Charge shown to [REDACTED] is \$163,607. The accurate  
7 calculation shows a savings of only \$35,616, a misrepresentation to the consumer of \$127,991,  
8 and a payoff 15 years too early.  
9

10 14. The use of the ECA by Nations in the Monster Disclosure presentation is the  
11 employment of a scheme, artifice or device to defraud or mislead borrowers into accepting an  
12 adjustable rate mortgage that they might not otherwise have been willing to accept had they been  
13 presented with accurate information. Here, rather than an easy answer being avoided, a complex  
14 and misleading answer is given to a question that was not asked.  
15

16 15. It is important to note that of the 131 consumers responding to the Department's  
17 Questionnaire, 88% had sought a fixed rate mortgage when first contacted by Nations. The  
18 Department's investigation shows that 83, or 63% of these responding consumers obtained an  
19 adjustable rate mortgage. It appears that these consumers and all other consumers presented with  
20 an ECA on an adjustable rate mortgage were deceived by Nations.  
21

## 22 I. OVERCHARGES

23 Section Summary: *Subsection (4) of the written disclosures section of the Act clearly*  
24 *establishes that a mortgage broker is prohibited from charging a borrower more in fees than is*  
25 *originally disclosed except in specifically limited situations. The intent is to prevent the*  
26

1  
2 mortgage broker from "baiting" the consumer with a set of promised charges, only to "switch"  
3 the charges on the consumer at a later point in the transaction. When this bait and switch  
4 scenario arises, the mortgage broker has violated the law by "overcharging" the consumer.  
5 This section discusses Nations' violation of subsection (4) with the intent of overcharging  
6 consumers.  
7

8 1. Pursuant to RCW 19.146.030(4)<sup>30</sup>, a mortgage broker shall not charge any fee that  
9 inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written  
10 disclosure pursuant to this section [the GFE], unless (a) the need to charge the fee was not  
11 reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage  
12 broker has provided to the borrower, no less than three business days prior to the signing of the  
13 loan closing documents, a clear written explanation of the fee and the reason for charging a fee  
14 exceeding that which was previously disclosed. However, if the borrower's closing costs,  
15 excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total  
16 closing costs in the most recent good faith estimate, no other disclosures shall be required by  
17 this subsection.  
18  
19

20 2. The Department found through its investigation that Nations committed 122  
21 violations of RCW 19.146.030(4), by over-charging consumers a total of \$735,641.13 in loans  
22 that were originated between April 1995 and November 1997. These consumers and the  
23 detailed dollar amount of the overcharges are shown in Exhibits D.1 through D.3 of this order.  
24

25 \_\_\_\_\_  
26 <sup>30</sup> Prior to 7/21/97, this section was identified as RCW 19.146.030(5). The language did not change with the  
amended statute, however.

1  
2 3. In making its finding, the Department reviewed the costs shown on the GFE  
3 compared to the costs shown on the HUD1 Settlement Statement. In transactions where the  
4 Department could verify that the borrowers had received no GFE at least three days prior to the  
5 date of closing, the Department found that the amount of overcharge violation was equal to the  
6 full dollar amount that inured to the benefit of Nations as shown on the HUD1 Settlement  
7 Statement.<sup>31</sup> This dollar amount of overcharge is identified as "High Overcharge" in Exhibit D.

8  
9 4. A "Low Overcharge" is shown in Exhibit D. for borrowers where the Department  
10 was unable to establish that Nations had failed to provide the GFE at least three days prior to  
11 closing. In these cases the overcharge shown is equivalent to the difference in fees that inured  
12 to the benefit of Nations from the existing GFE to the HUD1 Settlement Statement.

13  
14 5. In some cases, more than one GFE existed in the borrower's file. In these cases the  
15 Department made its finding based on which, if any, GFE best fit the requirements pursuant to  
16 RCW 19.146.030(4), and reflected the overcharge as the difference between this GFE and the  
17 HUD1 Settlement Statement.

18  
19 J. EXAMPLES OF SPECIFIC ACTS OF CONSUMER HARM BY NATIONS

20 1. On August 13, 1997, the Department completed its investigation of the Salick  
21 complaint and presented its findings to Nations in a letter of resolution (a copy of this resolution  
22  
23

24  
25 <sup>31</sup> In such situations the Department relied on the lack of a GFE, no signed GFE, an undated GFE, or the  
26 borrowers' own statements that they had not received a GFE as required. Note that it is the Department's belief  
that the majority of consumers did not receive a GFE until the date of signing closing papers, however, the  
Department has erred on the side of "substantive" proof in making its findings of failure to disclose as required.

1  
2 letter is attached as Exhibit E). This investigation found that Nations had committed the  
3 following apparent violations<sup>32</sup>:

4 a. RCW 19.146.265. Nations had held itself out as a mortgage broker and  
5 conducted the business of a mortgage broker with Salick from an unlicensed location in  
6 California, specifically 1045 W. Katella Avenue, Suite 200, Orange, California.  
7

8 b. RCW 19.146.205(3). Nations' surety bond did not provide coverage for the  
9 unlicensed California location at the time of the Salick loan.<sup>33</sup>

10 c. RCW 19.146.030(1). Nations had failed altogether to provide Salick with  
11 disclosures as required pursuant to RCW 19.146.030(2)(c), (d) and (f).  
12

13 d. RCW 19.146.030(1) and (2)(a). Nations had not provided Salick with a Truth  
14 in Lending Disclosure until seven days following the taking of Salick's application.

15 e. RCW 19.146.030(1) and (2)(b). Nations had not provided Salick with a Good  
16 Faith Estimate until seven days following the taking of Salick's application.  
17

18 f. RCW 19.146.030(4). Nations was in violation of the disclosure requirements  
19 pursuant to the Truth in Lending Act and the Real Estate Settlement Procedures Act.

20 g. RCW 19.146.0201(1), (2), (3) and (7). Nations had provided Salick with a  
21 Truth in Lending disclosure that clearly led Salick to believe that he was not responsible for  
22

23 \\\

24  
25 <sup>32</sup> Violations cited from statute in effect prior to 7/21/97.

26 <sup>33</sup> On September 10, 1997, Nations changed its bonding coverage to provide protection to consumers for loans  
originated from all of its locations.

1  
2 \$8,805.00 in brokers fees that Salick was charged at closing. The Department's determination  
3 was that such deception constituted bait and switch practices by Nations.

4 h. RCW 19.146.0201(8). Nations made various false statements to the  
5 Department in regard to the Salick investigation.  
6

7 2. The Department's resolution letter requested that Nations make restitution to Salick in  
8 the amount of \$13,005.00. In February 1998, Nations complied with this request and made  
9 restitution to Salick in the amount requested.

10 3. The Department has identified four additional consumers that received TIL Disclosures  
11 provided by Nations that would clearly lead the consumers to believe that they were not  
12 responsible for broker fees in the transaction. Like the Salick transaction, these borrowers  
13 received a TIL Disclosure that stated "These are FEES NOT paid by the Borrower." However,  
14 each of these borrowers did indeed pay Nations the very amount of broker fees that they were  
15 disclosed they would not have to pay.  
16

17 4. The borrowers and broker fees referred to are:  
18

- |                  |            |
|------------------|------------|
| 19 a. [REDACTED] | \$7,305.00 |
| 20 b. [REDACTED] | \$5,205.00 |
| 21 c. [REDACTED] | \$8,305.00 |
| 22 d. [REDACTED] | \$6,678.00 |

23 5. In response to the Department's allegations in the Salick resolution, Smart wrote on  
24 August 27, 1997, "Without discussing the substance of your letter's allegations at length, I would  
25 like to make one point. Specifically, you do correctly [no emphasis added] point out in your letter  
26

1  
2 that there is a discrepancy on page 2 of the Salick's April 7, 1997 final TIL disclosure - a  
3 discrepancy which this firm overlooked both in our review of the Disclosure Statement last month  
4 and in our letter to Alicia Haus of your Department dated July 31, 1997. As you point out,  
5 although the Prepaid Finance Charge itemization expressly disclosed the loan origination fee of  
6 \$8,805 to be paid to Nationscapital as broker, another box below it lists the \$8,805 fee under the  
7 heading 'These are FEES NOT paid by the Borrower.' This discrepancy will indeed cause  
8 Nationscapital to re-evaluate whether and in what amount restitution is due the Salicks."  
9

10 As stated, Nations subsequently refunded over \$13,000 to the Salicks. The Department  
11 believes that, since the same disclosure was provided to the borrowers identified in 4. above, and  
12 for any other borrowers who received this deceptive information on their TIL Disclosure  
13 statement, that Nations' response and position would be the same as in the Salick transaction.  
14

15 6. On September 2, 1997, the Department completed its investigation of the Prater  
16 complaint and presented its findings to Nations in a letter of resolution (a copy of this resolution  
17 letter is attached as Exhibit F). This investigation found that Nations had committed the  
18 following apparent violations<sup>34</sup>:  
19

20 a. RCW 19.146.265. Nations had held itself out as a mortgage broker and  
21 conducted the business of a mortgage broker with Prater from an unlicensed location in  
22 California, specifically 2922 E. Chapman Avenue, #202, Orange, California.  
23

24 b. RCW 19.146.205(3). Nations' surety bond did not provide coverage for the  
25 unlicensed California location.  
26



1  
2 c. RCW 19.146.030(1). Nations had failed altogether to provide Prater with  
3 disclosures as required pursuant to RCW 19.146.030(2)(c), (d) and (f).

4 d. RCW 19.146.030(4). Nations was in violation of the disclosure requirements  
5 pursuant to the Truth in Lending Act and the Real Estate Settlement Procedures Act.  
6

7 e. RCW 19.146.030(5). Nations charged fees inuring to its benefit which  
8 exceeded those previously disclosed, without redisclosing as required by this section.

9 f. RCW 19.146.0201(1), (2), (3) and (7). The Department determined that  
10 Nations' practices in the Prater transaction were misleading, misrepresentative and constituted  
11 acts of deception.  
12

13 7. The Department requested that Nations pay restitution to Prater in the amount of  
14 \$14,183.13. Nations to date has failed to provide any substantive response to the allegations  
15 raised by the Department in the Prater complaint and the complaint remains outstanding.<sup>35</sup>

16 K. UNLICENSED CONDUCT OF BUSINESS

17 1. On June 24, 1997, Willis explained under oath that all of Nations solicitation and  
18 telemarketing efforts with Washington consumers take place in California. Willis stated that  
19 representatives of the Bellevue office meet with the consumer following the initial telephone  
20 interview by a representative in California. Willis further stated that the files are transferred to  
21 California for processing and closing. It is apparent to the Department that representatives from  
22 the Bellevue office generally meet with the Washington consumer on two occasions:  
23  
24

25 <sup>34</sup> Violations cited from statute in effect prior to 7/21/97.  
26

1  
2 a. To obtain signatures on initial forms and to pick up certain paperwork; and

3 b. To obtain signatures on the closing documents.

4  
5 2. During the on-site investigation of records, Willis stated that the majority of loans  
6 originated by Nations in the south western area of Washington were handled through the Portland  
7 office.

8  
9 3. The Department sampled several loan files during its investigation and found that the  
10 following loan originators had held themselves out as Nations representatives able to conduct  
11 business with Washington consumers:

12 a. Marie Nino. Nino is shown as the "loan officer" in files for [REDACTED] (October  
13 1997), [REDACTED] (August 1997) and [REDACTED] (September 1997). Nino is shown in Nations'  
14 licensing file as a "Loan Originator" assigned to the California location. Nino is supervised by  
15 Kraus, Telesales Manager.

16 b. Joe Nardo. Nardo is shown as the "loan officer" in files for [REDACTED] (August  
17 1997), [REDACTED] (November 1997), [REDACTED] (December 1997), [REDACTED] (November 1997). Nardo is  
18 shown in the Nations' licensing file as a "TSR" assigned to the California location. Nardo is  
19 supervised by Kraus, Telesales Manager.

20 c. Jennifer McDonald. McDonald is shown as the "loan officer" in files for  
21 [REDACTED] (August 1997), [REDACTED] (November 1997) and [REDACTED] (July 1997). McDonald is shown in  
22  
23  
24

25  
26 <sup>35</sup> Nations has argued that due to the filing of a suit by Prater, any substantive response to the Department would be inappropriate.

1  
2 the Nations' licensing files as a "Loan Originator" assigned to the California location.  
3 McDonald's supervisor is Kraus, Telesales Manager.

4 d. Chantel Harris. Harris is shown as the "loan officer" in files for [REDACTED] (July  
5 1997) and [REDACTED] (October 1997). Harris is shown in the Nations' licensing file as a "Loan  
6 Originator" assigned to the California location. Harris' supervisor is Kraus, Telesales Manager.

7  
8 e. Gina Bailey. Bailey is shown as the "loan officer" in files for [REDACTED]  
9 (November 1997), [REDACTED] (November 1997), [REDACTED] (September 1997) and [REDACTED] (October  
10 1997). Bailey is shown in the Nations' licensing file as a "TSR" assigned to the California  
11 location. Bailey's supervisor is Kraus, Telesales Manager.

12  
13 f. Bill Becker. Becker is shown as the "loan officer" in files for [REDACTED] (August  
14 1997), [REDACTED] (December 1997) and [REDACTED] (August 1997). Becker is shown in the Nations'  
15 licensing file as a "Loan Originator" assigned to the California location. Becker's supervisor is  
16 Kraus, Telesales Manager.

17  
18 g. Gilbert Mariscal. Mariscal is shown as the "telephone interviewer" on the  
19 FNMA 1003 applications for [REDACTED] (July 1997) and [REDACTED] (August 1997). Mariscal is  
20 shown as the "loan officer" in the file for [REDACTED] (August 1997). Mariscal is shown in the  
21 Nations' licensing file as a "Loan Officer" assigned to the California location. Mariscal's  
22 supervisor is Williams, Sales Manager.

23  
24 h. Tara Barus. Barus is shown as the "interviewer" in files for [REDACTED] (September  
25 1997) and [REDACTED] (October 1997). Barus is also shown as the "loan officer contact" in files for  
26 [REDACTED] (August 1997) and [REDACTED] (September 1997). Barus is shown in the Nations' licensing

1  
2 file as a "Loan Officer" assigned to the California location. Barus' supervisor is Williams, Sales  
3 Manager.

4 i. Jeremy Foti. Foti is shown as the "interviewer" in files for [REDACTED]  
5 (October 1997) and [REDACTED] (September 1997). Foti is shown in the Nations licensing file as a  
6 "Loan Officer" assigned to the California location. Foti's supervisor is Williams, Sales Manager.  
7

8 4. The above loans are a representative sample of loan files randomly chosen by the  
9 Department for the purposes of determining the extent of unlicensed activity by Nations. These  
10 files show a pattern of Nations holding itself out as able to conduct the business of a mortgage  
11 broker from the California location. The Department also presents the following example of  
12 borrowers that are believed to have been met at their homes by one or more representatives  
13 assigned to the Portland location:  
14

- 15 a. [REDACTED] on or about July 9, 1997, Camas, WA.  
16 b. [REDACTED] on or about November 20, 1997, Vancouver, WA.  
17 c. [REDACTED] on or about October 2, 1997, Vancouver, WA.  
18 d. [REDACTED] on or about November 17, 1997, Vancouver, WA.  
19 e. [REDACTED] on or about September 18, 1997, Vancouver, WA.  
20 f. [REDACTED] on or about December 7, 1997, Vancouver, WA.  
21

22 5. All of the unlicensed conduct of business identified in sections 3. through 4. above are  
23 considered significant events by the Department for the following reasons:  
24  
25  
26

1  
2 a. Each act of unlicensed conduct occurred subsequent to the June 24, 1997, visit  
3 by the Department to the Bellevue office. In this visit, Willis was provided with information that  
4 this type of business conduct constituted unlicensed activity by Nations.

5 b. Each act of unlicensed conduct occurred subsequent to several correspondences  
6 between Nations and Nations' attorneys addressing the issue of unlicensed conduct.  
7

8 c. The majority of the acts of unlicensed conduct occurred subsequent to the  
9 Department's TCD alleging unlicensed conduct by Nations.

10 d. The majority of the Acts of unlicensed conduct occurred subsequent to the  
11 Superior Court Stay ordering Nations to comply with the Act.  
12

13 6. This blatant conduct of unlicensed practice of business following multiple regulatory  
14 warnings and a court order is deemed by the Department to be overt and intentional violations of  
15 the Act and the Director's authority to administer the Act.

16 7. The Department has further identified the following consumer transactions originated  
17 by Nations prior to its date of license issue in Washington:  
18

- |                  |                   |
|------------------|-------------------|
| 19 a. [REDACTED] | February 19, 1995 |
| 20 b. [REDACTED] | March 2, 1995     |
| 21 c. [REDACTED] | March 29, 1995    |
| 22 d. [REDACTED] | April 1, 1995     |
| 23 e. [REDACTED] | April 10, 1995    |
| 24 f. [REDACTED] | April 20, 1995    |
| 25 g. [REDACTED] | April 22, 1995    |

1  
2 h. [REDACTED] April 22, 1995  
3 i. [REDACTED] April 29, 1995  
4 j. [REDACTED] April 30, 1995  
5 k. [REDACTED] May 3, 1995  
6 l. [REDACTED] May 17, 1995  
7 m. Prater May 20, 1995  
8 n. [REDACTED] May 23, 1995  
9

10 8. It is clear to the Department from the findings in this section that Nations has been  
11 conducting business with Washington consumers from unlicensed locations continuously from  
12 February 19, 1995, through at least December 1997, regardless of regulatory warnings to cease  
13 such unlicensed conduct of business.  
14

15 L. TRUST ACCOUNT VIOLATIONS

16 1. On September 18, 1994, Chisick, as president of GAMC, provided the Department  
17 with a Certificate of Compliance and Authorization to Examine Trust Accounts for trust account  
18 number 300-067-808, maintained at First Interstate Bank of WA, N.A. Although this account was  
19 established for GAMC, the Department was led to believe by Medina that the account was to be  
20 continued for the use of Nations and the Department was not informed of the establishment of any  
21 other trust account by Nations.  
22

23 2. On June 24, 1997, Willis was asked about the Nations trust account to be maintained in  
24 accordance with RCW 19.146.050 and WAC 208-660-08010 through 08035 (Part D Trust  
25 Accounts and Accounting Requirements). Willis was unable to provide any information as to the  
26

1  
2 existence or whereabouts of the Nations trust account. Willis stated that all trust account matters  
3 were handled in California and that when funds were received from consumers for payment of  
4 third-party services, he would forward those funds to California with no knowledge of how they  
5 were subsequently deposited, maintained or disbursed.  
6

7 3. On June 25, 1997, the Department contacted First Interstate Bank of WA, N.A. to  
8 inquire about the maintenance of trust account number 300-067-808. A bank representative  
9 informed the Department that First Interstate Bank of WA, N.A. had been purchased and no  
10 information existed for that trust account number.  
11

12 4. On August 29 1997, based upon Willis' statements and the information obtained by the  
13 Department concerning account number 300-067-808, the Director entered the TCD citing  
14 violations of RCW 19.146.050. In Nations' Superior Court contest of the TCD it provided the  
15 Department with information that First Interstate Bank of WA, N.A. had been acquired by Wells  
16 Fargo Bank and that account number 300-067-808 had been replaced by account number  
17 00300068375.  
18

19 5. On September 17, 1998, the Department was provided with a limited amount of  
20 Nations trust account records. More records arrived at a later point in the investigation. As  
21 discussed in section IV.A. of this order, it was and is clear to the Department that Nations' trust  
22 account records were and are maintained in California.  
23  
24  
25  
26

1  
2 6. The trust account records provided to the Department covered the period of June 1995  
3 through August 1997. Although Nations is known to have conducted business in Washington  
4 prior to June 1995<sup>36</sup> no records were made available for those business periods.  
5

6 7. The trust account records provided to the Department included:

- 7 a. Monthly reconciliations of the bank statement to Nations' trust account records;  
8 b. Monthly bank statements;  
9 c. Client ledger sheets;  
10 d. Trial balances; and  
11 e. Copies of deposit and disbursement records.  
12

13 8. The Department's analysis of each month's reconciling records is provided as follows:

14 a. June 1995. Apparent violations itemized:

Service charges on account	\$ 9.57
Disbursement in excess	375.00
Excess balance	<u>10.75</u>
Total dollar amount of violations	\$395.32

20 b. July 1995. Apparent violations itemized:

Service charges on account	\$ 9.57
Excess balance	<u>86.85</u>
Total dollar amount of violations	\$115.00

25 c. August 1995. Apparent violations itemized:

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<sup>36</sup> See findings of unlicensed business conduct section III.K.7.



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Service charges on account	\$ 74.89
Excess balance	<u>56.96</u>
Total dollar amount of violations	\$131.85
d. September 1995. Apparent violations itemized:	
Service charges on account	\$ 53.08
Excess balance	<u>55.60</u>
Total dollar amount of violations	\$108.68
e. October 1995. Apparent violations itemized:	
Service charges on account	\$ 44.69
Excess balance	<u>54.74</u>
Total dollar amount of violations	\$99.43
f. November 1995. Apparent violations itemized:	
Service charges on account	\$ 56.92
Disbursement in excess	350.00
Excess balance	<u>52.49</u>
Total dollar amount of violations	\$459.41
g. December 1995. Apparent violations itemized:	
Service charges on account	\$ 18.75
Excess balance	<u>96.25</u>
Total dollar amount of violations	\$115.00
h. January 1996. Apparent violations itemized:	

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Service charges on account	\$ 19.36
Excess balance	<u>91.89</u>
Total dollar amount of violations	\$111.25
i. February 1996. Apparent violations itemized:	
Service charges on account	\$ 24.08
Excess balance	<u>143.76</u>
Total dollar amount of violations	\$167.84
j. March 1996. Apparent violations itemized:	
Service charges on account	\$ 16.84
2 incorrect deposits	575.00
Excess balance	<u>126.92</u>
Total dollar amount of violations	\$718.76
k. April 1996. Apparent violations itemized:	
Service charges on account	\$ 45.74
Excess balance	<u>122.06</u>
Total dollar amount of violations	\$167.80
m. May 1996. Apparent violations itemized:	
Service charges on account	\$ 28.66
Excess balance	<u>121.48</u>
Total dollar amount of violations	\$150.14
n. June 1996. Apparent violations itemized:	

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Service charges on account	\$ 21.48
Unreconciled difference	1,125.00
Excess balance	<u>100.00</u>
Total dollar amount of violations	\$1,246.48
o. July 1996. Apparent violations itemized:	
Service charges on account	\$ 65.39
Unreconciled difference	25.00
Excess balance	<u>34.61</u>
Total dollar amount of violations	\$ 125.00
p. August 1996. Apparent violations itemized:	
Service charges on account	\$ 50.01
Incorrect deposit s/b CA	275.00
Unreconciled difference	184.04
Excess balance	<u>68.64</u>
Total dollar amount of violations	\$ 577.69
q. September 1996. Apparent violations itemized:	
Service charges on account	\$ 78.90
Unrecorded deposit	375.00
Excess balance	<u>67.16</u>
Total dollar amount of violations	\$ 521.06
r. October 1996. Apparent violations itemized:	

1		
2	Service charges on account	\$ 53.11
3	Unrecorded deposit	150.00
4	Unreconciled difference	125.00
5	Excess balance	<u>14.05</u>
6		
7	Total dollar amount of violations	\$ 342.16
8	s. November 1996. Apparent violations itemized:	
9	Service charges on account	\$ 68.16
10	Overdraft	<u>204.11</u>
11		
12	Total dollar amount of violations	\$ 272.27
13	t. December 1996. Apparent violations itemized:	
14	Service charges on account	\$ 9.42
15	Excess balance	<u>90.58</u>
16		
17	Total dollar amount of violations	\$ 100.00
18	u. January 1997. Apparent violations itemized:	
19	Service charges on account	\$ 11.57
20	Excess balance	<u>79.01</u>
21		
22	Total dollar amount of violations	\$ 90.58
23	v. February 1997. Apparent violations itemized:	
24	Service charges on account	\$ 9.45
25	Excess balance	<u>69.56</u>
26		
	Total dollar amount of violations	\$ 79.01

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w. March 1997. Apparent violations itemized:

Service charges on account	\$ 10.74
Excess balance	<u>58.82</u>
Total dollar amount of violations	\$ 69.56

x. April 1997. Apparent violations itemized:

Service charges on account	\$ 10.75
Excess balance	<u>48.07</u>
Total dollar amount of violations	\$ 58.82

y. May 1997. Apparent violations itemized:

Service charges on account	\$ 10.80
Excess balance	<u>37.27</u>
Total dollar amount of violations	\$ 48.07

z. June 1997. Apparent violations itemized:

Service charges on account	\$ 10.83
Excess balance	<u>26.44</u>
Total dollar amount of violations	\$ 37.27

aa. July 1997. Apparent violations itemized:

Service charges on account	\$ 10.87
Excess balance	<u>15.57</u>
Total dollar amount of violations	\$ 26.44

bb. August 1997. Apparent violations itemized:

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Service charges on account	\$ 10.92
Excess balance	<u>89.08</u>
Total dollar amount of violations	\$ 100.00

9. The Department analyzed the date of receipt of trust funds received by Nations from consumers compared to the actual date of deposit by Nations. The Department found that several deposit slips were recorded by Nations as deposited sooner than the deposits actually occurred. The following are apparent violations for failure to deposit trust funds as required by RCW 19.146.050:<sup>37</sup>

[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	12 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$200.00	4 days to deposit
[REDACTED]	\$350.00	4 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	4 days to deposit

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[REDACTED]	\$325.00	4 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$300.00	3 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	3 days to deposit

<sup>37</sup> All of these deposit violations occurred prior to the trust accounting amendments effective 7/21/97.

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[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$225.00	4 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	3 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	9 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	8 days to deposit

STATEMENT OF CHARGES, AND  
INTENT TO ORDER - 120

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
318 GA Bldg, P.O. 41200  
Olympia, WA 98504-1200  
(360) 902-8703



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[REDACTED]	\$375.00	9 days to deposit
[REDACTED]	\$375.00	9 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	6 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	4 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$350.00	8 days to deposit
[REDACTED]	\$375.00	11 days to deposit
[REDACTED]	\$375.00	7 days to deposit
[REDACTED]	\$375.00	8 days to deposit
[REDACTED]	\$375.00	5 days to deposit
[REDACTED]	\$375.00	7 days to deposit

10. The Department found that a deposit of \$250.00 was made to the trust account by Willis on September 25, 1996.

11. The Department found that Nations had received trust funds through closing that were not deposited into Nations' trust account. On at least 26 occasions these funds were collected by Nations through checks that also contained the fees earned by Nations on the transaction. The entire amount of these checks, including the trust funds, are believed by the Department to have

1  
2 been deposited into Nations' general operating account, effectively commingling trust funds with  
3 general operating funds. The Department was unable to determine whether these funds were for  
4 bona fide services rendered, or whether Nations retained these funds as revenue rather than  
5 forwarding the amounts to third-party providers. A listing of the borrowers, dates the funds were  
6 received by Nations and what the funds were identified for is as follows:  
7

8	[REDACTED]	02/09/96	\$225.00 appraisal
9	[REDACTED]	05/21/96	\$ 75.00 tax service
10			\$ 27.50 flood certificate
11	[REDACTED]	03/28/96	\$375.00 appraisal
12	[REDACTED]	05/14/96	\$ 75.00 tax service
13			\$ 27.50 flood certificate
14	[REDACTED]	06/18/96	\$ 75.00 tax service
15			\$ 27.50 flood certificate
16	[REDACTED]	08/14/97	\$ 72.00 tax service
17			\$ 27.50 flood certificate
18	[REDACTED]	08/06/97	\$ 72.00 tax service
19			\$ 27.50 flood certificate
20	[REDACTED]	04/01/97	\$ 75.00 tax service
21			\$ 27.50 flood certificate
22	[REDACTED]	04/01/97	\$ 75.00 tax service
23			\$ 27.50 flood certificate
24	[REDACTED]		
25			
26			

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[REDACTED]

06/09/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

09/02/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

05/01/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

04/25/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

06/03/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

07/02/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

07/23/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

07/02/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

06/03/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

08/08/97

\$ 72.00 tax service

\$ 27.50 flood certificate

[REDACTED]

08/29/97

\$375.00 appraisal

STATEMENT OF CHARGES, AND  
INTENT TO ORDER - 123

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
318 GA Bldg, P.O. 41200  
Olympia, WA 98504-1200  
(360) 902-8703

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		\$ 60.00 credit report
[REDACTED]	01/08/97	\$ 75.00 tax service
		\$ 27.50 flood certificate
		\$ 40.00 courier
[REDACTED]	12/03/97	\$ 72.00 tax service
		\$ 27.50 flood certificate
[REDACTED]	06/03/97	\$ 72.00 tax service
		\$ 27.50 flood certificate
[REDACTED]	03/10/97	\$ 75.00 tax service
		\$ 27.50 flood certificate
[REDACTED]	10/30/97	\$ 72.00 tax service
		\$ 27.50 flood certificate
[REDACTED]	10/27/97	\$ 72.00 tax service
		\$ 27.50 flood certificate

12. The numerous trust account violations noted in this section constitute a pattern of clear and willful violations of RCW 19.146.050 and the rules to this section.

M. VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B

1. The Department has identified numerous occurrences of Nations requesting information from borrowers disallowed under Regulation B, Equal Credit Opportunity (12 CFR Part 202). Specifically, §202.5(d) states, "If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms

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2 married, unmarried, and separated. A creditor may explain that the category unmarried includes  
3 single, divorced, and widowed persons."

4  
5 2. Nations uses a pre-application screening form identified as a CONFIDENTIAL  
6 INFORMATION STATEMENT. A section in this statement is identified as FORMER  
7 MARRIAGE(S). This section requests information as to whether the former spouse is "deceased"  
8 or "divorced." It further asks the date of decease or divorce and the location of the decease or  
9 divorce.

10  
11 3. The CONFIDENTIAL INFORMATION STATEMENT was found in a majority of the  
12 Nations loan files. A violation of Regulation B occurs when Nations asks the question of the  
13 borrower, not when the borrower provides the answer. Therefore, every situation in which  
14 Nations asks a borrower their marital status in the form of "deceased" or "divorced" is an apparent  
15 violation of ECOA. However, the Department provides the following example of borrowers who  
16 provided Nations with answers to these sections:

17	██████████	10/21/96	divorced
18	██████████	6/26/97	divorced
19	██████████	7/9/97	divorced
20	██████████	8/9/97	divorced
21	██████████	9/18/97	divorced
22	██████████	9/25/97	divorced
23	██████████	9/30/97	divorced
24	██████████	11/14/97	divorced

1  
2 N. The Department's investigation began on June 24, 1997, and continues to date.

3 **V. GROUNDS FOR ENTRY OF ORDER**

4 A. As stated previously in this statement of charges, the Act was amended, effect July 21, 1997.

5 Where necessary and applicable, the cited sections are delineated by effective date  
6 corresponding to the apparent violation(s). Citation changes in which the code number was  
7 changed, but the language of the statute was left intact, are not delineated. These sections will  
8 be cited by their current codification.  
9

10 B. Definitions by statute. Pursuant to RCW 19.146.010 Definitions. Unless the context  
11 clearly requires otherwise, the definitions in this section apply throughout this chapter.  
12

13 (2) "Borrower" means any person who consults with or retains a mortgage broker or  
14 loan originator in an effort to obtain or seek advice or information on obtaining or applying to  
15 obtain a residential mortgage loan for himself, herself, or persons including himself or herself,  
16 regardless of whether the person actually obtains such a loan.  
17

18 (5) "Designated broker" means a natural person designated by the applicant for a license  
19 or licensee who meets the experience, education, and examination requirements set forth in  
20 RCW 19.146.210(1)(e).

21 (7) "Employee" means an individual who has an employment relationship  
22 acknowledged by both the employee and the licensee, and the individual is treated as an  
23 employee by the licensee for purposes of compliance with federal income tax laws.  
24

25 (9) "Investigation" means an examination undertaken for the purpose of detection of  
26 violations of this chapter or securing information lawfully required under this chapter.

1  
2 (10) "Loan originator" means a person employed, either directly or indirectly, or  
3 retained as an independent contractor by a person required to be licensed as a mortgage broker,  
4 or a natural person who represents a person required to be licensed as a mortgage broker, in the  
5 performance of any act specified in subsection (12) of this section.  
6

7 (11) "Lock-in agreement" means an agreement with a borrower made by a mortgage  
8 broker or loan originator, in which the mortgage broker or loan originator agrees that, for a  
9 period of time, a specific interest rate or other financing terms will be the rate or terms at which  
10 it will make a loan available to that borrower.  
11

12 (12) "Mortgage broker" means any person who for compensation or gain, or in the  
13 expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in  
14 obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as  
15 being able to make a residential mortgage loan or assist a person in obtaining or applying to  
16 obtain a residential mortgage loan.  
17

18 (14) "Residential mortgage loan" means any loan primarily for personal, family, or  
19 household use secured by a mortgage or deed of trust on residential real estate upon which is  
20 constructed or intended to be constructed a single family dwelling or multiple family dwelling  
21 of four or less units.  
22

23 (15) "Third-party provider" means any person other than a mortgage broker or lender  
24 who provides goods or services to the mortgage broker in connection with the preparation of  
25 the borrower's loan and includes, but is not limited to, credit reporting agencies, title  
26 companies, appraisers, structural and pest inspectors, or escrow companies.

1  
2 C. Definitions by Rule. Pursuant to WAC 208-660-010, as used in this chapter, the following  
3 definitions apply, unless the context otherwise requires:

4 (1) "Advertising material" means any form of sales or promotional materials to be used  
5 in connection with the mortgage broker business.  
6

7 (6) "Borrower" means any person who consults with or retains a mortgage broker or  
8 loan originator in an effort to obtain or seek advice or information on obtaining or applying to  
9 obtain a residential mortgage loan for himself, herself, or persons including himself or herself,  
10 regardless of whether the person actually obtains such a loan.  
11

12 (7) "Branch office" means a fixed physical location such as an office, separate from the  
13 principal place of business of the licensee, where the licensee holds itself out as a mortgage  
14 broker.

15 (8) "Branch office certificate" means a branch office license issued by the director to  
16 engage in the mortgage broker business as the branch office indicated in the certificate,  
17 pursuant to RCW 19.146.265.  
18

19 (9) "Certificate of passing an approved examination" means a certificate signed by the  
20 examination administrator verifying that the individual performed with a satisfactory score or  
21 higher on an approved licensing examination.  
22

23 (13) A person "controls" an entity if the person, directly or indirectly through one or  
24 more intermediaries, alone or in concert with others, owns, controls, or holds the power to vote  
25 twenty-five percent or more of the outstanding stock or voting power of the controlled entity.  
26



1  
2 (16) "Designated broker" means a natural person designated by the applicant for a  
3 license or licensee who meets the experience, education, and examination requirements set  
4 forth in RCW 19.146.210(e).

5  
6 (18) "Employee" means any natural person who:

7 (a) Has an employment relationship, acknowledged by both the employee and  
8 the mortgage broker; and

9 (b) Is treated as an employee by the mortgage broker for purposes of compliance  
10 with federal income tax laws.

11 (21) A person "holds oneself out" by advertising or otherwise informing the public that  
12 the person engages in any of the activities indicated, including without limit through the use of  
13 business cards, stationery, brochures, rate lists or other promotional items.

14  
15 (22) "Independent contractor" or "person who independently contracts" means any  
16 person that:

17 (a) Expressly or impliedly contracts to perform mortgage broker activities for a  
18 licensee;

19  
20 (b) With respect to its manner or means of performing the activities, is not  
21 subject to the licensee's right of control; and

22 (c) Is not treated as an employee by the licensee for purposes of compliance with  
23 federal income tax laws.

24  
25 (23) "License" means a license issued by the director to engage in the mortgage broker  
26 business.

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(24) "Licensee" or "licensed mortgage broker" means:

(a) A mortgage broker licensed by the director; and

(b) Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

(25) "Loan originator" means a natural person:

(a) Who is a mortgage broker employee who performs any mortgage broker activities; or

(b) Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

(26) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms upon which it will make a loan available to the borrower.

(28) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:

(a) Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or

(b) Holds himself or herself out as being able to do so.

(30) "Out-of-state applicant or licensee" means an applicant for a license or licensee that does not maintain a physical office within this state.

(31) "Person" means a natural person, corporation, company, partnership, or association.

1  
2 (32) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(5), means any  
3 amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest,  
4 and similar items in regard to the security property.  
5

6 (33) "Principal" means any person who controls, directly or indirectly through one or  
7 more intermediaries, alone or in concert with others, a ten percent or greater interest in a  
8 partnership, company, association or corporation, and the owner of a sole proprietorship.  
9

10 (35) "Real Estate Settlement Procedures Act" means the Real Estate Settlement  
11 Procedures Act, 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et  
12 seq.  
13

14 (37) "Residential mortgage loan" means any loan primarily for personal, family, or  
15 household use secured by a mortgage or deed of trust on residential real estate upon which is  
16 constructed or intended to be constructed a single family dwelling or multiple family dwelling  
17 of four or less units.  
18

19 (39) "Third-party provider" means any third party, other than a mortgage broker or  
20 lender, that provides goods or services to the mortgage broker in connection with the  
21 preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies,  
22 title insurance companies, appraisers, structural and pest inspectors, or escrow companies.  
23 However, "third-party provider" does include a third-party lender, to the extent it provides lock-  
24 in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.  
25

26 (40) "Transfer" means a sale, transfer, assignment, or other disposition, whether by  
operation of law in a merger or otherwise.

(41) "Truth in Lending Act" means the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

D. Certain Prohibitions. Pursuant to RCW 19.146.0201, it is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to engage in certain prohibitive practices outlined in this section.<sup>38</sup>

Allegations of specific prohibited acts committed by Nations are discussed below:

1. Pursuant to RCW 19.146.0201(1), it is a violation to directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person; (2) Engage in any unfair or deceptive practice toward any person; or (3) Obtain property by fraud or misrepresentation.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they either personally commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, create an environment that instructs, requires or condones others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts

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<sup>38</sup> Prior to 7/21/97, this paragraph referred to violations of this section as "unlawful" rather than "a violation of this chapter."

1  
2 and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K.  
3 of this order.

4           2. Pursuant to RCW 19.146.0201(6), it is a violation to fail to make disclosures to loan  
5 applicants and noninstitutional investors as required by RCW 19.146.030 and any other  
6 applicable state or federal law.

7  
8           Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
9 violation of this section when they either personally commit the acts and practices listed in  
10 sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order, instruct employees to commit  
11 the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order,  
12 create an environment that instructs, requires or condones others in the commission of the acts  
13 and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order, or fail to  
14 undertake whatever reasonable steps might be necessary to prevent Nations employees from  
15 committing the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of  
16 this order.  
17

18  
19           3. Pursuant to RCW 19.146.0201(7), it is a violation to make, in any manner, any false  
20 or deceptive statement or representation with regard to the rates, points, or other financing  
21 terms or conditions for a residential mortgage loan or engage in bait and switch advertising.

22           Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
23 violation of this section when they either personally commit the acts and practices listed in  
24 sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., and IV.J. of this order, instruct  
25 employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G.,  
26

1  
2 IV.H., IV.I., and IV.J. of this order, create an environment that instructs, requires or condones  
3 others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F.,  
4 IV.G., IV.H., IV.I., and IV.J. of this order, or fail to undertake whatever reasonable steps might  
5 be necessary to prevent Nations employees from committing the acts and practices listed in  
6 sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., and IV.J. of this order.  
7

8 4. Pursuant to RCW 19.146.0201(8), prior to July 21, 1997, it was a violation to make  
9 any false statement in connection with any reports filed by a licensee or in connection with any  
10 examination of the licensee's business.  
11

12 Nations, Jamie Chisick, Brad Chisick and Willis were in violation of this section when  
13 they provided the Department with a false representation of the business change from GAMC  
14 to Nations in 1995.

15 Jamie Chisick was in violation of this section when he informed the Department on  
16 March 18, 1997, that "Riverview's handling of non-escrow services often results in reduced  
17 costs to Nationscapital's clients."  
18

19 Willis was in violation of this section when he provided false information during the  
20 Department's June 24, 1997, investigation concerning the existence of sales manuals at the  
21 Bellevue office.

22 Nations, Jamie Chisick, Buff and Willis were in violation of this section when they  
23 attempted to convince the Department's investigators that they held approval from the Director  
24 to maintain Nations' records in California.  
25  
26

1  
2 Nations, Jamie Chisick and Buff were in violation of this section when they made  
3 statements to the Department that Nations' Washington records would be promptly returned to  
4 Washington and made available to the Department.

5  
6 5. Pursuant to RCW 19.146.0201(8), as of July 21, 1997, it is a violation to negligently  
7 make any false statement or knowingly and willfully make any omission of material fact in  
8 connection with any reports filed by a mortgage broker or in connection with any  
9 investigation conducted by the department.

10 Nations, Jamie Chisick, and Buff were in violation of this section when they stated to  
11 the Department that all records had been produced as requested and that no documents had been  
12 removed from the loan files. Nations, Jamie Chisick and Buff were in violation of this section  
13 when they, subsequent to the Stay, informed the Department in writing on November 4, 1997,  
14 that Nations had implemented steps to insure full compliance with the Act, when, they clearly  
15 had not.

16  
17  
18 6. Pursuant to RCW 19.146.0201(11), and prior to July 21, 1997, it was a violation to  
19 advertise any rate of interest without conspicuously disclosing the annual percentage rate  
20 implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-  
21 lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 or the equal credit  
22 opportunity act, Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in  
23 any advertising of residential mortgage loans or any other mortgage brokerage activity. Also,  
24 prior to July 21, 1997, and pursuant to RCW 19.146.030(4), a violation of the Truth-in-Lending  
25  
26

1  
2 Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation  
3 of RCW 19.146.030 for purposes of this chapter.

4 From July 21, 1997, pursuant to RCW 19.146.0201(10), it is a violation to fail to  
5 comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation  
6 Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and  
7 Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and  
8 Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising  
9 of residential mortgage loans or any other mortgage brokerage activity.  
10

11 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
12 violation of this section when they either personally commit the acts and practices listed in  
13 sections IV.C, IV.E., IV.F., IV.J., and IV.M. of this order, instruct employees to commit the  
14 acts and practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this order, create an  
15 environment that instructs, requires or condones others in the commission of the acts and  
16 practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this order, or fail to  
17 undertake whatever reasonable steps might be necessary to prevent Nations employees from  
18 committing the acts and practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this  
19 order.  
20

21  
22 E. Written Disclosure of Fees and Costs. Pursuant to RCW 19.146.030(1), within three  
23 business days following receipt of a loan application or any moneys from a borrower, a  
24 mortgage broker shall provide to each borrower a full written disclosure containing an  
25 itemization and explanation of all fees and costs that the borrower is required to pay in  
26



1  
2 connection with obtaining a residential mortgage loan, and specifying the fee or fees which  
3 inure to the benefit of the mortgage broker and other such disclosures as may be required by  
4 rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or  
5 cost is not determinable. This subsection shall not be construed to require disclosure of the  
6 distribution or breakdown of loan fees, discount, or points between the mortgage broker and  
7 any lender or investor.<sup>39</sup> Pursuant to RCW 19.146.030(2), the written disclosure shall contain  
8 specific information. Nations violations of RCW 19.146.030(1) and (2) are discussed by type  
9 or content of required disclosure below:  
10

11  
12 1. Pursuant to RCW 19.146.030(2)(a), it is a violation to fail to provide within the  
13 required time period, the annual percentage rate, finance charge, amount financed, total amount  
14 of all payments, number of payments, amount of each payment, amount of points or prepaid  
15 interest and the conditions and terms under which any loan terms may change between the time  
16 of disclosure and closing of the loan; and if a variable rate, the circumstances under which the  
17 rate may increase, any limitation on the increase, the effect of an increase, and an example of  
18 the payment terms resulting from an increase. Disclosure in compliance with the requirements  
19 of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now  
20 or hereafter amended, shall be deemed to comply with the disclosure requirements of this  
21 subsection. (Referred to earlier as the "TIL Disclosure.")  
22  
23

24 <sup>39</sup> Prior to 7/21/97, this paragraph cited a violation for failure to make the required disclosures "upon receipt of a  
25 loan application and before receipt of any moneys from a borrower." Although the Department has determined  
26 that Nations committed at least 68 violations under the prior language of RCW 19.146.030, for consistency in this

1  
2 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
3 violation of this section when they: i). either personally fail to provide the TIL Disclosure as  
4 required by this section, or commit the acts and practices listed in sections IV.C, IV.D., IV.E.,  
5 and IV.J. of this order; ii). instruct employees to fail to provide the TIL Disclosure as required  
6 by this section, or instruct employees to commit the acts and practices listed in sections IV.C.,  
7 IV.D., IV.E., and IV.J. of this order; iii). create an environment that instructs or requires others  
8 to fail to provide the TIL Disclosure as required by this section, or instruct, require or condone  
9 others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., and  
10 IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to  
11 insure the provision of the TIL Disclosure as required by this section by Nations employees, or  
12 fail to undertake whatever reasonable steps might be necessary to prevent Nations employees  
13 from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this  
14 order.  
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17  
18 2. Pursuant to RCW 19.146.030(2)(b), it is a violation to fail to provide within the  
19 required time period, the itemized costs of any credit report, appraisal, title report, title  
20 insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest  
21 inspection, and any other third-party provider's costs associated with the residential  
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26 order, these 68 violations are included as violations under the less restrictive language of the section from 7/21/97 forward.

1  
2 mortgage loan. Disclosure through good faith estimates of settlement services and special  
3 information booklets in compliance with the requirements of the real estate settlement  
4 procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now  
5 or hereafter amended, shall be deemed to comply with the disclosure requirements of this  
6 subsection. (Referred to earlier as the "GFE Disclosure.")  
7

8 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
9 violation of this section when they: i). either personally fail to provide the GFE Disclosure as  
10 required by this section, or commit the acts and practices listed in sections IV.C, IV.D., IV.E.,  
11 and IV.J. of this order; ii). instruct employees to fail to provide the GFE Disclosure as required  
12 by this section, or instruct employees to commit the acts and practices listed in sections IV.C.,  
13 IV.D., IV.E., and IV.J. of this order; iii). create an environment that instructs or requires others  
14 to fail to provide the GFE Disclosure as required by this section, or instruct, require or condone  
15 others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., and  
16 IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to  
17 insure the provision of the GFE Disclosure as required by this section by Nations employees, or  
18 fail to undertake whatever reasonable steps might be necessary to prevent Nations employees  
19 from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this  
20 order.  
21  
22

23  
24 3. Pursuant to RCW 19.146.030(2)(c), it is a violation to fail to provide within the  
25 required time period, a disclosure, if applicable, covering the cost, terms, duration, and  
26 conditions of a lock-in agreement and whether a lock-in agreement has been entered, and

1  
2 whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in  
3 agreement has not been entered, disclosure in a form acceptable to the director that the  
4 disclosed interest rate and terms are subject to change. (Referred to earlier as the "Rate Lock  
5 Disclosure.")  
6

7 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
8 violation of this section when they: i). either personally fail to provide the Rate Lock Disclosure  
9 as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., and  
10 IV.J. of this order; ii). instruct employees to fail to provide the Rate Lock Disclosure as  
11 required by this section, or instruct employees to commit the acts and practices listed in  
12 sections IV.C., IV.D., and IV.J. of this order; iii). create an environment that instructs or  
13 requires others to fail to provide the Rate Lock Disclosure as required by this section, or  
14 instruct, require or condone others in the commission of the acts and practices listed in sections  
15 IV.C., IV.D., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might  
16 be necessary to insure the provision of the Rate Lock Disclosure as required by this section by  
17 Nations employees, or fail to undertake whatever reasonable steps might be necessary to  
18 prevent Nations employees from committing the acts and practices listed in sections IV.C.,  
19 IV.D., and IV.J. of this order.  
20  
21

22 4. Pursuant to RCW 19.146.030(2)(d), it is a violation to fail to provide within the  
23 required time period, a statement that if the borrower is unable to obtain a loan for any reason,  
24 the mortgage broker must, within five days of a written request by the borrower, give copies of  
25 any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit  
26

1  
2 the appraisal, title report, or credit report to any other mortgage broker or lender to whom the  
3 borrower directs the documents to be sent. (Referred to earl as "Third Party Provider Reports  
4 Disclosure.")

5  
6 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
7 violation of this section when they: i). either personally fail to provide the Third Party Provider  
8 Reports Disclosure as required by this section, or commit the acts and practices listed in  
9 sections IV.C, IV.D., and IV.J. of this order; ii). instruct employees to fail to provide the Third  
10 Party Provider Reports Disclosure as required by this section, or instruct employees to commit  
11 the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order; iii). create an  
12 environment that instructs or requires others to fail to provide the Third Party Provider Reports  
13 Disclosure as required by this section, or instruct, require or condone others in the commission  
14 of the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order, or iv). fail to  
15 undertake whatever reasonable steps might be necessary to insure the provision of the Third  
16 Party Provider Reports Disclosure as required by this section by Nations employees, or fail to  
17 undertake whatever reasonable steps might be necessary to prevent Nations employees from  
18 committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order.  
19  
20

21 5. Pursuant to RCW 19.146.030(2)(e), it is a violation to fail to provide information to  
22 the borrower covering whether and under what conditions any lock-in fees are refundable to the  
23 borrower.  
24

25 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
26 violation of this section when they: i). either personally fail to provide this additional Rate Lock

1  
2 Disclosure as required by this section, or commit the acts and practices listed in sections IV.C,  
3 IV.D., and IV.J. of this order; ii). instruct employees to fail to provide this additional Rate Lock  
4 Disclosure as required by this section, or instruct employees to commit the acts and practices  
5 listed in sections IV.C., IV.D., and IV.J. of this order; iii). create an environment that instructs  
6 or requires others to fail to provide this additional Rate Lock Disclosure as required by this  
7 section, or instruct, require or condone others in the commission of the acts and practices listed  
8 in sections IV.C., IV.D., and IV.J. of this order, or iv). fail to undertake whatever reasonable  
9 steps might be necessary to insure the provision of this additional Rate Lock Disclosure as  
10 required by this section by Nations employees, or fail to undertake whatever reasonable steps  
11 might be necessary to prevent Nations employees from committing the acts and practices listed  
12 in sections IV.C., IV.D., and IV.J. of this order.  
13  
14

15 6. Pursuant to RCW 19.146.030(2)(f), it is a violation to fail to provide, a statement  
16 providing that moneys paid by the borrower to the mortgage broker for third-party provider  
17 services are held in a trust account and any moneys remaining after payment to third-party  
18 providers will be refunded. (Referred to earlier as the "Trust Funds Disclosure.")  
19

20 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
21 violation of this section when they: i). either personally fail to provide the Trust Funds  
22 Disclosure as required by this section, or commit the acts and practices listed in sections IV.C,  
23 IV.D., IV.E., and IV.J. of this order; ii). instruct employees to fail to provide the Trust Funds  
24 Disclosure as required by this section, or instruct employees to commit the acts and practices  
25 listed in sections IV.C., IV.D., IV.E., and IV.J. of this order; iii). create an environment that  
26

1  
2 instructs or requires others to fail to provide the Trust Funds Disclosure as required by this  
3 section, or instruct, require or condone others in the commission of the acts and practices listed  
4 in sections IV.C., IV.D., IV.E., and IV.J. of this order, or iv). fail to undertake whatever  
5 reasonable steps might be necessary to insure the provision of the Trust Funds Disclosure as  
6 required by this section by Nations employees, or fail to undertake whatever reasonable steps  
7 might be necessary to prevent Nations employees from committing the acts and practices listed  
8 in sections IV.C., IV.D., IV.E., and IV.J. of this order.  
9

10 7. Pursuant to RCW 19.146.030(4)<sup>40</sup>, a mortgage broker shall not charge any fee that  
11 inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written  
12 disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably  
13 foreseeable at the time the written disclosure was provided and (b) the mortgage broker has  
14 provided to the borrower, no less than three business days prior to the signing of the loan  
15 closing documents, a clear written explanation of the fee and the reason for charging a fee  
16 exceeding that which was previously disclosed. However, if the borrower's closing costs,  
17 excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total  
18 closing costs in the most recent good faith estimate, no other disclosures shall be required by  
19 this subsection.  
20  
21

22 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in  
23 violation of this section when they: i). either personally fail to provide this disclosure as  
24

25 \_\_\_\_\_  
26 <sup>40</sup> Prior to 7/21/97, this paragraph was codified as RCW 19.146.030(5). No other change was made to this section of the amended statute.

1  
2 required by this section, or commit the acts and practices listed in sections IV.I., and IV.J. of  
3 this order; ii). instruct employees to fail to provide this disclosure as required by this section, or  
4 instruct employees to commit the acts and practices listed in sections IV.I., and IV.J. of this  
5 order; iii). create an environment that instructs or requires others to fail to provide this  
6 disclosure as required by this section, or instruct, require or condone others in the commission  
7 of the acts and practices listed in sections IV.I., and IV.J. of this order, or iv). fail to undertake  
8 whatever reasonable steps might be necessary to insure the provision of this disclosure as  
9 required by this section by Nations employees, or fail to undertake whatever reasonable steps  
10 might be necessary to prevent Nations employees from committing the acts and practices listed  
11 in sections IV.I., and IV.J. of this order.  
12  
13

14 F. Moneys for Third-Party Provider Services Deemed in Trust -- Deposit of Moneys in Trust

15 Account--Use of Trust Account. Pursuant to RCW 19.146.050, all moneys received by a  
16 mortgage broker from a borrower for payment of third-party provider services shall be deemed  
17 as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall  
18 deposit, prior to the end of the third business day following receipt of such trust funds, all such  
19 trust funds in a trust account of a federally insured financial institution located in this state. All  
20 trust account funds collected under this chapter must remain on deposit in a trust account in the  
21 state of Washington until disbursement. The trust account shall be designated and maintained  
22 for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from  
23 execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the  
24 corpus of the trust account or commingle any other operating funds with trust account funds.  
25  
26



1  
2 Withdrawals from the trust account shall be only for the payment of bona fide services rendered  
3 by a third-party provider or for refunds to borrowers. The director shall make rules which: (1)  
4 Direct mortgage brokers how to handle checks and other instruments that are received by the  
5 broker and that combine trust funds with other funds; and (2) permit transfer of trust funds out  
6 of the trust account for payment of other costs only when necessary and only with the prior  
7 express written permission of the borrower. Any interest earned on the trust account shall be  
8 refunded or credited to the borrowers at closing. Trust accounts that are operated in a manner  
9 consistent with this section and any rules adopted by the director, are considered exempt from  
10 taxation under chapter 82.04 RCW.  
11

12  
13 Chapter 208-660 WAC, PART D, TRUST ACCOUNTS AND ACCOUNTING  
14 REQUIREMENTS, states:

15 1. 208-660-08010. Establishment of trust account for borrower funds to pay  
16 third-party providers. Each mortgage broker shall as trustee hold all funds received from  
17 borrowers for payment to third-party providers. The funds may not be used for the benefit of  
18 the mortgage broker or any person not entitled to such benefit, except as may be expressly  
19 permitted by the Mortgage Broker Practices Act. Each mortgage broker shall establish a trust  
20 account(s) for the funds in a financial institution's branch located in this state. Each mortgage  
21 broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing  
22 with the funds, in accordance with the act.  
23

24  
25 2. 208-660-08020. Required trust account records and procedures. Each  
26 mortgage broker shall establish and maintain a system of records and procedures for trust

1  
2 accounts as provided in the Mortgage Broker Practices Act. Any alternative records or  
3 procedures proposed for use by the mortgage broker shall be approved in advance by the  
4 director or his or her designee. Each mortgage broker shall maintain as part of its books  
5 and records:  
6

7 (1) A trust account deposit register and copies of all validated deposit slips or  
8 signed deposit receipts for each deposit to the trust account;

9 (2) A ledger for each trust account. Each ledger must contain a separate  
10 subaccount ledger sheet for each borrower from whom funds are received for payment of third-  
11 party providers. Each receipt and disbursement pertaining to such funds must be posted to the  
12 ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must  
13 show the date of deposit, identifying check or instrument number, amount and name of  
14 remitter. Offsetting entries to each ledger sheet must show the date of check, check number,  
15 amount of check, name of payee and invoice number if any. Canceled or closed ledger sheets  
16 must be identified by time period and borrower name or loan number;  
17

18 (3) A trust account check register consisting of a record of all deposits to and  
19 disbursements from the trust account;  
20

21 (4) Reconciled trust account bank statements;

22 (5) A monthly trial balance of the ledger of trust accounts, and a reconciliation  
23 of the ledger of trust accounts with the related bank statement(s) and the related check  
24 register(s).  
25

26 The reconciled balance of the trust account(s) must at all times equal the sum of:

1  
2 (a) The outstanding amount of funds received from borrowers for payment of  
3 third-party providers; and

4 (b) The outstanding amount of any deposits into the trust fund of the mortgage  
5 broker's own funds in accordance with WAC 208-660-08025(4).  
6

7 3. 208-660-08025. Trust account deposit requirements.

8 (1) All funds received from borrowers or on behalf of borrowers for the payment  
9 of third-party providers, whether specifically identified as such or not, and regardless of when  
10 they are received, must be deposited in the trust account(s) prior to the end of the next business  
11 day following receipt. In order to satisfy this requirement in regard to the deposit of a check or  
12 money order, the mortgage broker must within one business day after receipt of the check or  
13 money order:  
14

15 (a) Endorse the check or money order "for deposit only" with the broker's  
16 trust account number and mail the check postage prepaid to its financial institution; or

17 (b) Endorse the check or money order "for deposit only" with the  
18 mortgage broker's trust account deposit number and mail the check or money order postage  
19 prepaid to the main office of the broker. The main office shall, in turn, deposit the check or  
20 money order in its financial institution prior to the end of the next business day after receipt of  
21 the check or money order in the main office; or  
22

23 (c) Deposit the check or money order into its trust account by depositing  
24 it directly at the branch where its trust account is held or at an ATM of its financial institution.  
25  
26

1  
2 (2) All deposits to the trust account(s) must be documented by a bank deposit  
3 slip which has been validated by bank imprint, or by an attached deposit receipt which bears the  
4 signature of an authorized representative of the mortgage broker indicating that the funds were  
5 actually deposited into the proper account(s).  
6

7 (3) Receipt of funds by wire transfer or any means other than cash, check, or  
8 money order, must be posted in the same manner as other receipts. Any such transfer of funds  
9 must include a traceable identifying name or number supplied by the financial institution or  
10 transferring entity. The mortgage broker must also retain a receipt for the deposit of the funds  
11 which must contain the traceable identifying name or number supplied by the financial  
12 institution or transferring entity.  
13

14 (4) Deposits to the trust account(s) must be limited to funds delivered to the  
15 mortgage broker for payment to third-party providers, except a mortgage broker may deposit its  
16 own funds into the trust account(s) to prevent a disbursement in excess of an individual  
17 borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed  
18 records of the deposit and its purpose are maintained in the trust ledger and the trust account(s)  
19 check register. Any deposits of the mortgage broker's own funds into the trust account(s) must  
20 be held in trust in the same manner as funds paid by borrowers for the payment of third-party  
21 providers and treated accordingly in compliance with the Mortgage Broker Practices Act. If a  
22 mortgage broker has deposited its own funds into its trust account, the mortgage broker may  
23 receive reimbursement for such deposit at closing into its general business bank account  
24 provided:  
25  
26

1  
2 (a) All third-party provider's charges associated with the mortgage  
3 broker's deposit have been paid;

4 (b) The HUD 1 Settlement Statement provided to the borrower clearly  
5 reflects the line item, "deposit paid by broker," and the amount deposited;  
6

7 (c) The HUD 1 Settlement Statement provided to the borrower clearly  
8 reflects the line item, "reimbursement to broker for funds advances," and the amount  
9 reimbursed; and

10 (d) Any funds disbursed by escrow at closing to the mortgage broker for  
11 payment of unpaid third-party providers' expenses charged or to be charged to the mortgage  
12 broker are deposited into the borrower's subaccount of the mortgage broker's trust account.  
13

14 4. 208-660-08030. Trust account disbursement requirements.

15 (1) Each mortgage broker is responsible for the disbursement of all trust account  
16 funds, whether disbursed by personal signature, signature plate, or signature of another person  
17 authorized to act on the mortgage broker's behalf.  
18

19 (3) Disbursements may be made from the trust account(s) for the payment of  
20 bona fide third-party providers' services rendered in the course of the borrower's loan  
21 origination, if the borrower has consented in writing to the payment. Such consent may be  
22 given at any time during the application process and in any written form, provided that it  
23 contains sufficient detail to verify the borrower's consent to the use of trust funds. No  
24 disbursement on behalf of the borrower may be made from the trust account until the  
25  
26

1  
2 borrower's or broker's deposit of sufficient funds into the trust account(s) is available for  
3 withdrawal.

4 (5) Among other prohibited disbursements, no disbursement may be made from  
5 a borrower's subaccount:  
6

7 (a) In excess of the amount held in the borrower's subaccount (commonly  
8 referred to as a disbursement in excess);

9 (b) In payment of a fee owed to any employee of the mortgage broker or  
10 in payment of any business expense of the mortgage broker;

11 (c) For payment of any service charges related to the management or  
12 administration of the trust account(s);  
13

14 (d) For payment of any fees owed to the mortgage broker by the  
15 borrower, or to transfer funds from the subaccount to any other account; and

16 (e) For the payment of fees owed to the broker under RCW 19.146.070  
17 (2)(a).  
18

19 (6) A mortgage broker may, in the case of a closed and funded transaction,  
20 transfer excess funds remaining in the individual borrower's subaccount into the mortgage  
21 broker's general business bank account upon determination that all third-party providers'  
22 expenses have been accurately reported in the loan closing documents and have been paid in  
23 full, and that the borrower has received credit in the loan closing documents for all funds  
24 deposited in the trust account.  
25  
26

1  
2 Each mortgage broker shall maintain a detailed audit trail for any disbursements  
3 from the borrower's subaccount(s) into the mortgage broker's general business bank account,  
4 including documentation in the form of a final HUD-1 Settlement Statement form showing that  
5 credit has been received by the borrower in the closing and funding of the transaction. The  
6 disbursements must be made by a check drawn on the trust account and deposited directly into  
7 the mortgage broker's general business bank account.  
8

9 Nations, Jamie Chisick, Buff and Willis are in violation of the trust accounting  
10 requirements under both the Act and the rules to the Act, as identified above, when they  
11 commit the violations noted in section IV.L. of this order.  
12

13 G. Accounting Requirements. Pursuant to RCW 19.146.060(2), and prior to July 21, 1997, a  
14 mortgage broker shall maintain accurate, current, and readily available books and records at the  
15 mortgage broker's usual business location until at least four years have elapsed following the  
16 effective period to which the books and records relate.  
17

18 Pursuant to RCW 19.146.060(2), from July 21, 1997, except as otherwise provided in  
19 subsection (3) of this section, a mortgage broker shall maintain accurate and current books and  
20 records which shall be readily available at the mortgage broker's usual business location until at  
21 least twenty-five months have elapsed following the effective period to which the books and  
22 records relate.  
23

24 Pursuant to RCW 19.146.060(3), where a mortgage broker's usual business location  
25 is outside of the state of Washington, the mortgage broker shall, as determined by the director  
26 by rule, either maintain its books and records at a location in this state, or reimburse the director

1  
2 for his or her expenses, including but not limited to transportation, food, and lodging expenses,  
3 relating to any examination or investigation resulting under this chapter.

4 Pursuant to RCW 19.146.060(4), "books and records" includes but is not limited to:

5  
6 (a) Copies of all advertisements placed by or at the request of the mortgage  
7 broker which mention rates or fees. In the case of radio or television advertisements, or  
8 advertisements placed on a telephonic information line or other electronic source of information  
9 including but not limited to a computer data base or electronic bulletin board, a mortgage  
10 broker shall keep copies of the precise script for the advertisement. All advertisement records  
11 shall include for each advertisement the date or dates of publication and name of each  
12 periodical, broadcast station, or telephone information line which published the advertisement  
13 or, in the case of a flyer or other material distributed by the mortgage broker, the dates,  
14 methods, and areas of distribution; and

15  
16 (b) Copies of all documents, notes, computer records if not stored in printed  
17 form, correspondence or memoranda relating to a borrower from whom the mortgage broker  
18 has accepted a deposit or other funds, or accepted a residential mortgage loan application or  
19 with whom the mortgage broker has entered into an agreement to assist in obtaining a  
20 residential mortgage loan.  
21

22 Pursuant to WAC 208-660-140(2), all books and records must be kept in a location in  
23 this state that is readily accessible to the department. However, a mortgage broker may store its  
24 books and records outside the state with the prior approval of the director, and after executing a  
25 written agreement with the director:  
26



1  
2 (a) To provide access to its books and records to investigate complaints against  
3 the mortgage broker; and

4 (b) To pay the department's travel, lodging and per diem expenses incurred in  
5 travel to examine books and records stored out-of-state.  
6

7 Pursuant to WAC 208-660-140(3), books and records include without limitation: The  
8 original contracts for the broker's compensation, an accounting of all funds received in  
9 connection with loans, a copy of the settlement statements as provided to borrowers, a record  
10 of any fees refunded to applicants for loans that did not close, copies of the good faith estimates  
11 and all other written disclosures, and all other correspondence, papers or records relating to  
12 loan applications.  
13

14 Nations, Jamie Chisick, Brad Chisick, Buff and Willis are in violation of these sections  
15 when they fail to maintain books and records as discussed under section IV.A. of this order.

16 H. License - Required. Pursuant to RCW 19.146.200(1), a person may not engage in the  
17 business of a mortgage broker, except as an employee of a person licensed or exempt from  
18 licensing, without first obtaining and maintaining a license under this chapter.  
19

20 Pursuant to RCW 19.146.250, no license issued under the provisions of this chapter  
21 shall authorize any person other than the person to whom it is issued to do any act by virtue  
22 thereof nor to operate in any other manner than under his or her own name except:  
23

24 (1) A licensed mortgage broker may operate or advertise under a name other  
25 than the one under which the license is issued by obtaining the written consent of the director to  
26 do so; and

1  
2 (2) A broker may establish one or more branch offices under a name or names  
3 different from that of the main office if the name or names are approved by the director, so long  
4 as each branch office is clearly identified as a branch or division of the main office. Both the  
5 name of the branch office and of the main office must clearly appear on the sign identifying the  
6 office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or  
7 signs used by the mortgage firm on which either the name of the main or branch offices  
8 appears.  
9

10 Pursuant to RCW 19.146.265, a licensed mortgage broker may apply to the director for  
11 authority to establish one or more branch offices under the same or different name as the main  
12 office upon the payment of a fee as prescribed by the director by rule. Provided that the  
13 applicant is in good standing with the department, as defined in rule by the director, the director  
14 shall promptly issue a duplicate license for each of the branch offices showing the location of  
15 the main office and the particular branch. Each duplicate license shall be prominently  
16 displayed in the office for which it is issued.  
17  
18

19 Pursuant to WAC 208-660-110(1), a license may not be transferred.

20 The above sections, and the definitions of "branch office," "holds oneself out," and  
21 "mortgage broker," establish a violation for any person or mortgage broker that hold  
22 themselves out as a mortgage broker to Washington consumers from any fixed physical  
23 location, unless such location holds either a license issued pursuant to RCW 19.146.200 or a  
24 branch license issued pursuant to RCW 19.146.265.  
25  
26

1  
2 Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Williams and Kraus are in violation  
3 of these sections when they participated in, authorized, supervised, instructed, or condoned the  
4 unlicensed acts of holding Nations out as a mortgage broker in Washington from locations in  
5 Portland and California as is discussed in section IV.K. of this order. Nations, Chisick and  
6 Willis are in violation of these sections when they participated in, authorized, supervised,  
7 instructed, or condoned unlicensed acts of holding Nations out as a mortgage broker in  
8 Washington prior to holding a license as is discussed specifically in sections IV.K.7. and 8.  
9 Further, Nations, Jamie Chisick, Brad Chisick and Willis are in violation of WAC 208-660-  
10 110(1), when they convinced the Department that a license transfer from GAMC to Nations  
11 was actually a name change authorized under the rules.  
12

13  
14 At times, representatives of Nations and GAMC have provided the Department with  
15 conflicting information concerning the legal and licensed status of Nations and GAMC. Jamie  
16 Chisick and Willis are in violation of RCW 19.146.250, when they held GAMC out under the  
17 name of Nations as able to conduct business with Washington consumers.  
18

19 I. Investigation Powers--Duties of Person Subject to Examination or Investigation. Pursuant to  
20 RCW 19.146.235, for the purposes of investigating complaints arising under this chapter, the  
21 director may at any time, either personally or by a designee, examine the business, including  
22 but not limited to the books, accounts, records, and files used therein, of every licensee and of  
23 every person engaged in the business of mortgage brokering, whether such a person shall act or  
24 claim to act under or without the authority of this chapter. For that purpose the director and  
25  
26

1  
2 designated representatives shall have access during regular business hours to the offices and  
3 places of business, books, accounts, papers, records, files, safes, and vaults of all such  
4 persons. The director or designated person may direct or order the attendance of and examine  
5 under oath all persons whose testimony may be required about the loans or the business or  
6 subject matter of any such examination or investigation, and may direct or order such person to  
7 produce books, accounts, records, files, and any other documents the director or designated  
8 person deems relevant to the inquiry. If a person who receives such a directive or order  
9 does not attend and testify, or does not produce the requested books, records, files, or other  
10 documents within the time period established in the directive or order, then the director or  
11 designated person may issue a subpoena requiring attendance or compelling production of  
12 books, records, files, or other documents. No person subject to examination or investigation  
13 under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books,  
14 records, computer records, or other information.  
15

16  
17 Nations, Jamie Chisick, Buff and Willis are in violation of this section when, as  
18 discussed under sections III.B. and IV.A. of this order, they:  
19

- 20 1. Withheld, refused or delayed the Department access to records.
- 21 2. Removed records to California.
- 22 3. Failed to comply with three demands, a subpoena and a directive.
- 23 4. Destroyed or secreted file documents.
- 24

25 J. License Application Denial or Condition; License Suspension or Revocation. Pursuant to  
26 WAC 208-660-160(1), the director may deny or condition approval of a license application, or

1  
2 suspend or revoke a license if the applicant or licensee, or any principal or designated broker of  
3 the applicant or licensee:

4 (e) Has failed to demonstrate financial responsibility, character, and general fitness such  
5 as to command the confidence of the community and to warrant a belief that the business will  
6 be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker  
7 Practices Act.  
8

9 (f) Has omitted, misrepresented, or concealed material facts in obtaining a license or in  
10 obtaining reinstatement thereof;

11 (g) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer  
12 Protection Act;  
13

14 (j) Has aided or abetted an unlicensed person to practice in violation of the Mortgage  
15 Broker Practices Act;

16 (k) Has demonstrated incompetence or negligence that results in injury to a person or  
17 that creates an unreasonable risk that a person may be harmed;

18 (m) Has failed to comply with an order, directive, or requirement of the director, or his  
19 or her designee, or with an assurance of discontinuance entered into with the director, or his or  
20 her designee;  
21

22 (n) Has performed an act of misrepresentation or fraud in any aspect of the conduct of  
23 the mortgage broker business or profession;

24 (o) Has failed to cooperate with the director, or his or her designee, including without  
25 limitation by:  
26

1  
2 (i) Not furnishing any necessary papers or documents requested by the director  
3 for purposes of conducting an investigation for disciplinary actions or denial, suspension, or  
4 revocation of a license; or

5  
6 (ii) Not furnishing any necessary papers or documents requested by the director  
7 for purposes of conducting an investigation into a complaint against the licensee filed with the  
8 department, or providing a full and complete written explanation of the circumstances of the  
9 complaint upon request by the director;

10 (p) Has interfered with an investigation or disciplinary proceeding by willful  
11 misrepresentation of facts before the director or the director's designee, or by the use of threats  
12 or harassment against a client, witness, employee of the licensee, or representative of the  
13 director for the purpose of preventing them from discovering evidence for, or providing  
14 evidence in, any disciplinary proceeding or other legal action;

15  
16 (2) The director may deny or condition approval of a branch office application, or  
17 suspend or revoke a branch office certificate, if the branch office manager has failed to provide  
18 any required items described in subsection (1)(r) and (s) of this section.

19  
20 K. Powers and Duties—Violations Pursuant to RCW 19.146.220(1) The director shall enforce  
21 all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to  
22 mortgage brokers, and hold hearings.

23  
24 Pursuant to RCW 19.146.220(2), the director may impose the following sanctions:

1  
2 (a) Deny applications for licenses for: (i) Violations of orders, including cease  
3 and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or  
4 19.146.0201(1) through (9);

5 (b) Suspend or revoke licenses for:

6  
7 (i) False statements or omission of material information on the  
8 application that, if known, would have allowed the director to deny the application for the  
9 original license;

10 (iii) Failure to comply with any directive or order of the director; or

11 (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1)  
12 through (9) or (12), 19.146.205(4), or 19.146.265;

13  
14 (c) Impose fines on the licensee, employee or loan originator of the licensee, or  
15 other person subject to this chapter for:

16 (i) Any violations of RCW 19.146.0201 (1) through (9) or (12),  
17 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

18 (ii) Failure to comply with any directive or order of the director;

19  
20 (d) Issue orders directing a licensee, its employee or loan originator, or other  
21 person subject to this chapter to:

22 (i) Cease and desist from conducting business in a manner that is  
23 injurious to the public or violates any provision of this chapter; or

24 (ii) Pay restitution to an injured borrower; or  
25  
26

1  
2 (e) Issue orders removing from office or prohibiting from participation in the  
3 conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee,  
4 or loan originator of any licensed mortgage broker or any person subject to licensing under this  
5 chapter for:

6  
7 (i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030  
8 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

9 (ii) False statements or omission of material information on the  
10 application that, if known, would have allowed the director to deny the application for the  
11 original license;

12  
13 (iv) Failure to comply with any directive or order of the director.

14 (3) Each day's continuance of a violation or failure to comply with any directive or  
15 order of the director is a separate and distinct violation or failure.

16 (4) The director shall establish by rule standards for licensure of applicants licensed in  
17 other jurisdictions.

18  
19 L. Administration and Interpretation. Pursuant to RCW 19.146.223, the director shall have the  
20 power and broad administrative discretion to administer and interpret the provisions of this  
21 chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

22 M. Findings and Declaration. Pursuant to RCW 19.146.005, the legislature finds and declares  
23 that the brokering of residential real estate loans substantially affects the public interest. The  
24 practices of mortgage brokers have had significant impact on the citizens of the state and the  
25 banking and real estate industries. It is the intent of the legislature to establish a state system of  
26



1  
2 licensure in addition to rules of practice and conduct of mortgage brokers to promote honesty  
3 and fair dealing with citizens and to preserve public confidence in the lending and real estate  
4 community.

5  
6 N. Fees. Pursuant to RCW 19.146.228, the director shall establish fees by rule in accordance  
7 with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter.

8 These fees may include:

9 (2) An investigation fee to cover the costs of any investigation of the books and records  
10 of a licensee or other person subject to this chapter.

11 Pursuant to WAC 208-660-060(4), upon completion of any investigation of the books  
12 and records of a mortgage broker other than a licensee, the department will furnish to the broker  
13 a billing to cover the cost of the investigation. The investigation charge will be calculated at  
14 the rate of forty-five dollars per hour that each staff person devoted to the investigation. The  
15 investigation billing will be paid by the mortgage broker promptly upon receipt.

16  
17 O. Claims Against Bond. Pursuant to RCW 19.146.240(1) The director or any person injured  
18 by a violation of this chapter may bring an action against the surety bond or approved  
19 alternative of the licensed mortgage broker who committed the violation or who employed or  
20 engaged the loan originator who committed the violation.

21 Pursuant to RCW 19.146.240(2)(a), the director or any person who is damaged by the  
22 licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter,  
23 may bring suit upon the surety bond or approved alternative in the superior court of any county  
24 in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the  
25  
26

1  
2 superior court. Any such action must be brought not later than one year after the alleged  
3 violation of this chapter or rules adopted under this chapter.

4 Pursuant to RCW 19.146.240(3) The remedies provided under this section are  
5 cumulative and nonexclusive and do not affect any other remedy available at law.  
6

7 P. Fines and Penalties. Pursuant to WAC 208-660-165, each mortgage broker and each of its  
8 principals, designated brokers, officers, employees, independent contractors, and agents shall  
9 comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of  
10 any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or  
11 requirement of the director may, at the discretion of the director, subject the violator to a fine of  
12 up to one hundred dollars for each offense. Each day's continuance of the violation is a  
13 separate and distinct offense. In addition, the director in his or her discretion may by order  
14 assess other penalties for a violation of the Mortgage Broker Practices Act.  
15

16 Q. Liability. RCW 19.146.245, a licensed mortgage broker is liable for any conduct violating  
17 this chapter by the designated broker, a loan originator, or other licensed mortgage  
18 broker while employed or engaged by the licensed mortgage broker.  
19

20 R. Criminal penalties. Pursuant to RCW 19.146.110, any person who violates any provision of  
21 this chapter other than RCW 19.146.050 or any rule or order of the director shall be guilty of a  
22 misdemeanor punishable under chapter 9A.20 RCW. Any person who violates RCW  
23 19.146.050 shall be guilty of a class C felony under chapter 9A.20 RCW.  
24

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2 **VI. NOTICE OF INTENTION TO ENTER AN ORDER**

3 Respondents violations of the Act as set forth above constitute the basis for the entry of an  
4 order under RCW 19.146.220. Therefore, it is the Director's intention to ORDER:

5  
6 **A. Nationscapital Mortgage Corp. ("Nations"):**

7 1. Nations' license to hold itself out as a mortgage broker to Washington consumers from  
8 any location is revoked for a period of twenty years.

9 2. Nations' application for branch licenses in Portland and California is denied.

10 3. Nations shall maintain its books and records in compliance with RCW 19.146.060 and  
11 the rules thereunder.

12 4. Nations shall pay restitution to 122 consumers in the amount of \$735,641.13, as  
13 represented in Exhibit D of this order.

14 5. Nations shall pay a fine of \$474,250.00, detailed as follows:

15 a. Violations of RCW 19.146.0201(1) - (3), assessed at \$100.00 per day times  
16 643 separate violations, for a total of \$64,300.00.

17 b. Violations of RCW 19.146.0201(6), assessed at \$100.00 per day times 643  
18 separate violations, for a total of \$64,300.00.

19 c. Violations of RCW 19.146.0201(7), assessed at \$100.00 per day times 293  
20 separate violations for a total of \$29,300.00.

21 d. Violation of RCW 19.146.0201(8) pre-July 21, 1997, assessed at \$100.00 per  
22 day for 91 days of a single violation for a total of \$9,100.00.  
23  
24  
25  
26

1  
2 e. Violation of RCW 19.146.0201(8), assessed at \$100.00 per day times 371  
3 separate violations for a total of \$37,100.00.

4 f. Violations of RCW 19.146.0201(10), assessed at \$100.00 per day times 371  
5 separate violations for a total of \$37,100.00.

6  
7 g. Violations of RCW 19.146.050, assessed at \$75 per day, for a total of  
8 \$20,850.00, detailed as follows:

9 i. 187 days late on deposit times \$75.00 for \$14,025.00.

10 ii. 1 commingling deposit times \$75.00 for \$75.00.

11 iii. 26 failures to deposit times \$75.00 for \$1,950.00.

12 iv. 64 counts of commingling or conversion times \$75.00 for \$4,800.00.

13  
14 h. Violation of RCW 19.146.060(3), assessed at \$100.00 per day for 978 days of a  
15 single violation for a total of \$97,800.00.

16 i. Violations of RCW 19.146.265, assessed at \$100.00 per day for 978 days of a  
17 single violation for a total of \$97,800.00.

18  
19 j. A violation of failure to comply with any directive or order of the director  
20 beginning August 18, 1997 and continuing for 166 days for a total of \$16,600.00.

21 6. Nations shall pay an investigation fee of \$29,040.75 for 645.35 hours of investigation.

22 B. Jamie Chisick.

23 1. Jamie Chisick is prohibited from participating in the conduct of the affairs of a licensed  
24 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
25 employee, or loan originator, for a period of twenty (20) years, based upon violations of RCW  
26

1  
2 19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265, and failure to comply  
3 with any directive or order of the director.

4 2. Jamie Chisick shall maintain Nations books and records in compliance with RCW  
5 19.146.060 and the rules thereunder.

6  
7 3. Jamie Chisick, on behalf of Nations or personally, shall pay restitution to 122  
8 consumers in the amount of \$735,641.13, as represented in Exhibit D of this order, however this  
9 restitution shall be paid only once by either Jamie Chisick, Brad Chisick or Nations.

10 4. Jamie Chisick shall pay a fine of \$474,250.00, detailed as follows:

11 a. Violations of RCW 19.146.0201(1) – (3), assessed at \$100.00 per day times  
12 643 separate violations, for a total of \$64,300.00.

13  
14 b. Violations of RCW 19.146.0201(6), assessed at \$100.00 per day times 643  
15 separate violations, for a total of \$64,300.00.

16 c. Violations of RCW 19.146.0201(7), assessed at \$100.00 per day times 293  
17 separate violations for a total of \$29,300.00.

18 d. Violation of RCW 19.146.0201(8) pre-July 21, 1997, assessed at \$100.00 per  
19 day for 91 days of a single violation for a total of \$9,100.00.

20 e. Violation of RCW 19.146.0201(8), assessed at \$100.00 per day times 371  
21 separate violations for a total of \$37,100.00.

22 f. Violations of RCW 19.146.0201(10), assessed at \$100.00 per day times 371  
23 separate violations for a total of \$37,100.00.  
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1  
2 g. Violations of RCW 19.146.050, assessed at \$75 per day, for a total of  
3 \$20,850.00, detailed as follows:

4 i. 187 days late on deposit times \$75.00 for \$14,025.00.

5 ii. 1 commingling deposit times \$75.00 for \$75.00.

6 iii. 26 failures to deposit times \$75.00 for \$1,950.00.

7 iv. 64 counts of commingling or conversion times \$75.00 for \$4,800.00.

8  
9 h. Violation of RCW 19.146.060(3), assessed at \$100.00 per day for 978 days of a  
10 single violation for a total of \$97,800.00.

11 i. Violations of RCW 19.146.265, assessed at \$100.00 per day for 978 days of a  
12 single violation for a total of \$97,800.00.

13 j. A violation of failure to comply with any directive or order of the director  
14 beginning August 18, 1997 and continuing for 166 days for a total of \$16,600.00.

15  
16 5. Jamie Chisick shall pay, on behalf of Nations, an investigation fee of \$29,040.75 for  
17 645.35 hours of investigation, however, this fee shall be paid only once either by Nations, Jamie  
18 Chisick or Brad Chisick.

19  
20 C. Brad Chisick.

21 1. Brad Chisick is prohibited from participating in the conduct of the affairs of a licensed  
22 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
23 employee, or loan originator, for a period of twenty (20) years, based upon violations of RCW  
24 19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265.  
25  
26

1  
2 2. Brad Chisick, on behalf of Nations or personally, shall pay restitution to 122  
3 consumers in the amount of \$735,641.13, as represented in Exhibit D of this order, however this  
4 restitution shall be paid only once by either Jamie Chisick, Brad Chisick or Nations.

5  
6 3. Brad Chisick shall pay, on behalf of Nations, an investigation fee of \$29,040.75 for  
7 645.35 hours of investigation, however, this fee shall be paid only once either by Nations, Jamie  
8 Chisick, or Brad Chisick.

9 D. Steven Willis ("Willis").

10 1. Willis is prohibited from participating in the conduct of the affairs of a licensed  
11 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
12 employee, or loan originator, for a period of fifteen (15) years, based upon violations of RCW  
13 19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265, and failure to comply  
14 with any directive or order of the director.

15  
16 2. Willis shall pay a fine of \$404,700.00 detailed as follows:

17 a. Violations of RCW 19.146.0201(1) – (3), assessed at \$100.00 per day times  
18 643 separate violations, for a total of \$64,300.00.

19  
20 b. Violations of RCW 19.146.0201(6), assessed at \$100.00 per day times 643  
21 separate violations, for a total of \$64,300.00.

22 c. Violations of RCW 19.146.0201(7), assessed at \$100.00 per day times 293  
23 separate violations for a total of \$29,300.00.

24  
25 d. Violations of RCW 19.146.0201(10), assessed at \$100.00 per day times 371  
26 separate violations for a total of \$37,100.00.

1  
2 e. Violations of RCW 19.146.050, assessed at \$75 per day, for a total of  
3 \$14,100.00, detailed as follows:

4 i. 187 days late on deposit times \$75.00 for \$14,025.00.

5 ii. 1 commingling deposit times \$75.00 for \$75.00.

6  
7 f. Violation of RCW 19.146.060(3), assessed at \$100.00 per day for 978 days of a  
8 single violation for a total of \$97,800.00.

9 g. Violations of RCW 19.146.265, assessed at \$100.00 per day for 978 days of a  
10 single violation for a total of \$97,800.00.

11 E. Michael Buff ("Buff").

12  
13 1. Buff is prohibited from participating in the conduct of the affairs of a licensed  
14 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
15 employee, or loan originator, for a period of five (5) years, based upon violations of RCW  
16 19.146.0201, RCW 19.146.030, and RCW 19.146.265, failure to comply with any directive or  
17 order of the director.

18  
19 2. Buff shall pay a fine of \$37,100.00, detailed as follows:

20 a. Violation of RCW 19.146.0201(8), assessed at \$100.00 per day times 371  
21 separate violations for a total of \$37,100.00.

22 F. Scott Johnson ("Johnson").

23  
24 Johnson is prohibited from participating in the conduct of the affairs of a licensed  
25 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
26



1  
2 employee, or loan originator, for a period of five (5) years, based upon violations of RCW  
3 19.146.0201, RCW 19.146.030.

4 G. Darren Williams ("Williams")  
5

6 Williams is prohibited from participating in the conduct of the affairs of a licensed  
7 mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,  
8 employee, or loan originator, for a period of five (5) years, based upon violations of RCW  
9 19.146.0201, RCW 19.146.030, and RCW 19.146.265.

10 H. Kevin Kraus ("Kraus")  
11

12 Kraus is prohibited from participating in the conduct of the affairs of a licensed mortgage  
13 broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or  
14 loan originator, for a period of five (5) years, based upon violations of RCW 19.146.0201, RCW  
15 19.146.030, and RCW 19.146.265.

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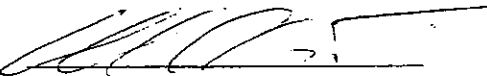
## VII. AUTHORITY AND PROCEDURE

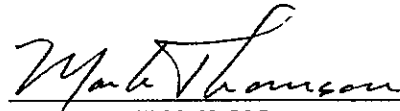
This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist is entered pursuant to RCW 19.146.220, RCW 19.146.230 and chapter 34.05 RCW. The Respondents may make a written request for hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying this Statement of Charges and Notice of Intent to Enter an Order.

DATED this 13<sup>th</sup> day of May, 1998.

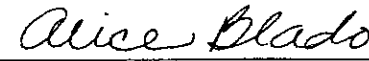


Presented by:

  
Chuck Cross  
Supervising Analyst

  
MARK THOMSON  
Director  
Division of Consumer Services  
Department of Financial Institutions

Reviewed by:

  
Alice Blado  
Assistant Attorney General